

People Crossing Borders: An Analysis of U.S. Border Protection Policies

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Summary

Since at least the 1980s, the border has played a central role in U.S. policy discussions. Policymakers have for years debated the best strategy for providing border protection. What has emerged from these efforts has been a generally agreed upon framework of mission and goals. However, some question whether the strategy has been sufficiently mapped out in a comprehensive fashion. The broad framework currently in place is generally supported by a collection of agency or function-specific strategic elements that show some commonalities.

For congressional policymakers, the current state of border protection strategy presents at least three questions: (1) What does the current border protection framework consist of? (2) Is it working? and (3) Are there more effective alternatives to achieve border protection? This report addresses these three questions through two competing models for conceptualizing a border protection system, through the analysis of existing documentation and data, and through the presentation of various legislative options.

For critics and advocates of U.S. border protection policy, there are a host of competing policy alternatives for how to effectively protect the border. While some individuals want more enforcement and stricter admission criteria, others want to lessen these restrictions. Ultimately, the policy choices are rooted in competing visions of what U.S. border policy should look like. These visions can be grouped into at least two camps: (1) the unilateral security model based on a metaphorical “fortress” and (2) an interdependence (or cooperation-based) model based on a metaphorical “complex organism.”

The current border protection framework can be understood as consisting of a mission, three goals, and five strategic elements. The mission is securing and managing the U.S. border. The current border protection framework can be summarized as obtaining effective control of the borders, safeguarding lawful trade and travel, and identifying and disrupting transnational criminal organizations. Finally, the five strategic elements to achieve these goals consist of Department of Homeland Security leadership, deployment of layered security, maximizing domain awareness, promotion of a shared agency culture, and expansion of the border through international and domestic partnerships.

Analysis of available data suggests that despite some support for the viability of the current border protection approach in its present state, it is not seemingly providing sufficient deterrence to overcome labor market demand for illegal workers. Yet, definitive conclusions of effectiveness cannot be made because the current border protection operation is an incomplete version of what policymakers envisioned.

The border protection framework goals are necessarily vague, as the breadth of the threats and activities at the border are wide. But these goals are rooted in the notion that a strategy based on enforcement can ultimately prevent or deter most actions that are undesirable. This assumption has been the source of much debate and continues to be the source of skepticism in certain circles. As suggested above, few conclusive claims about the effectiveness of the current border protection framework can be made. Yet, even if enforcement-only measures do provide some level of deterrence and prevention against border violations, these efforts are both costly and do not necessarily address the underlying causes of such activities. Moreover, they can have unintended consequences. This report will not be updated.

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Securing the borders of the United States has long been a contentious political issue. Although the United States is often described as “a country of immigrants” and a “melting pot,” highlighting the relative openness of its borders, the borders have also served as a line of protection against external security threats. Such threats can take many shapes, but in recent years they have mainly included illegal immigration, smuggling and trafficking, and terrorism. With globalization producing increasing transnational threats to the United States, the pressure to use the border as a protection mechanism has grown. Since at least the 1980s, the border has played a central role in the debate over how to provide domestic security in the United States. The terrorist attacks of September 11, 2001 (and subsequent attempts on U.S. soil), the significant domestic population of unauthorized aliens, and recent concerns over drug-trafficking-related violence in Mexico and the potential for spillover into the United States have all continued to fuel this debate.

Policymakers have also had to cope with a tension between border protection issues and free market ideals. Market competitiveness and demands for efficiency create a push for more open borders to unencumber the flows of capital and labor. Security concerns, however, frequently impede the movement of goods and labor as they are screened to determine if they pose risks to the United States. Thus, the need for an effective strategy to manage this inherent tension and provide for border protection is ever present.

In the past decade, with the reorganization of homeland security and the national security focus on terrorism, several Congresses, Administrations, and The National Commission on Terrorist Attacks Upon the United States (commonly known as the 9/11 Commission) have put forth proposals for how to secure the U.S. border.¹ What has emerged from these efforts has been a generally agreed upon framework of mission and goals. However, while the recent publication of the Quadrennial Homeland Security Review (QHSR)² lays the foundation for a cross-agency border protection strategy, some question whether a comprehensive strategy has been sufficiently mapped out.³ The broad framework currently in place generally consists of a QHSR underpinning supported by a collection of agency or function specific strategic elements that show some commonalities. Thus, the current border protection framework⁴ can be summarized as securing and managing the U.S. border through obtaining effective control of the borders, safeguarding lawful trade and travel, and identifying and disrupting transnational criminal organizations. The five strategic commonalities to achieve these goals consist of the Department of Homeland Security (DHS) leadership, deployment of layered security, maximizing domain awareness, promotion of a shared agency culture, and expansion of the border through international and domestic partnerships.

For some policymakers, despite the existence of a border protection framework, questions remain as to whether border security officials respond to emerging threats in a sufficiently comprehensive fashion. Moreover, despite the fact that over \$100 billion has been appropriated to border protection functions since the formation of DHS,⁵ it remains unclear whether border

¹ Frequently, these proposals deal only with a specific kind of threat (e.g. terrorism, drugs) or a specific aspect of the border (e.g., ports of entry, maritime borders, aviation).

² U.S. Department of Homeland Security, *Quadrennial Homeland Security Review Report: A Strategic Framework for a Secure Homeland*, Washington, DC, February 2010.

³ For example, see Carolyn Thompson, “NY Sen. Schumer Wants Northern Border Drug Plan,” *The Associated Press*, April 21, 2010, online edition, or see H.R. 4321 and S. 3332.

⁴ The terms “border protection framework” and “border protection policies” are used interchangeably throughout this report.

⁵ This figure is calculated from taking enacted appropriations from FY2004-FY2010 to the four agencies with

protection measures are being deployed that will ultimately provide for a comprehensive, strategically effective border protection effort without significantly disrupting the border region economy.

For congressional policymakers, the current state of border protection presents at least three questions: (1) What does the current border protection framework consist of? (2) Is it working? and (3) Are there more effective alternatives to achieve border protection? The answers to these questions are important for Congress to conduct proper oversight of border protection functions, as well as to gauge its priorities. Moreover, such questions provide an opportunity for legislators to re-evaluate the policies that have been pursued in providing border protection, especially as these policies might impact other elements of the U.S. border, such as markets and communities.

This report provides an overview of the current border protection framework and its operationally oriented strategic elements and measures their effectiveness. The report draws on documents from Congress and the Administration, as well as other publications, to pull together an overarching picture of protection at the border. This overview includes a historical background and a definition of what “border protection” means in a contemporary context. Building on this definition, the report provides two theoretical models for border protection approaches based on unilateral and cooperative approaches, followed by an extended analysis of the major elements within the current border protection framework. This analysis also includes discussions of how and why, certain strategic elements notwithstanding, many of the current border-related security policies focus on the physical border rather than conceptualizing the border in broader terms. Statistical analyses of some key indicators are used to evaluate the impact of the current framework. Lastly, this report offers some policy options—both short-term and long-term—for addressing the effectiveness of current border protection policies. It is important to note that while this report deals only with the movement of people, the same principles discussed also apply to the cargo side of border protection.

Defining the Evolving Challenge

While policymakers have wrestled with notions of what border protection should look like, for border enforcement agencies, the practical questions have remained similar for decades. In essence, border agencies have attempted to develop agency-specific strategies that prevent activities which circumvent U.S. laws on cross-border activities. Although the framework for border protection has evolved, much of the current framework is rooted in traditional enforcement activities and deterrence-based principles as discussed below.

Background

For the past 85 years, the United States has attempted to obtain some measure of operational control⁶ of its borders. While U.S. government efforts to secure ports of entry (POEs) date back prior to the American Revolution, the founding of the U.S. Border Patrol (USBP) in 1924 by an appropriations act of Congress (Labor Appropriation Act of 1924; 43 Stat. 240) marked the official beginning of efforts to gain complete control of the border. These efforts included the

significant border protection functions—Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), Transportation Security Administration (TSA), and the U.S. Coast Guard (USCG).

⁶ The term “operational control” is one defined under law in section 2(b) of the Secure Fence Act of 2006 (8 U.S.C. 1701 note; P.L. 109-367) as meaning “the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.”

interception of illegal immigrants and the interception of contraband.⁷ Fifty years later, under the former Immigration and Naturalization Service (INS) the strategy had evolved to a broader level of abstraction but remained largely similar at its core. According to a Department of Justice (DOJ) report,⁸ “[t]he basic tenet of the I&NS [sic] border strategy has been: Given constraints on manpower and resources, attempt to (1) prevent the entry of persons between ports-of-entry, and (2) rapidly interdict and apprehend aliens who have illegally crossed the border.”⁹

Beginning in the 1980s, political emphasis was placed on reducing the sale of illegal drugs in the United States. Policymakers recognized that much of the drug supply was smuggled across the border in land, air, and maritime environments. This spurred an increased emphasis on gaining operational control to interdict illicit activity. Moreover, this new emphasis led to a reevaluation of border policies; as a result, border agencies began emphasizing a goal of deterrence (in addition to interdiction). The approach for achieving this deterrence would involve greater manpower and resource deployment to the border regions to monitor activity and engage suspected violators.

In 1993, a study commissioned by the Office of National Drug Control Policy concluded that the Southwest border was “being overrun,” noting as an example that 6,000 illegal immigrants attempted to enter the United States every night along a 7.5 mile stretch of the San Diego border. The study also concluded that drug smuggling was a serious threat along the Southwest border, and recommended that the INS change its focus from arresting illegal immigrants to preventing their entry.¹⁰ Partly in response to public and congressional concerns about the number of illegal immigrants and drugs entering the country, in 1994 the USBP began implementing its first National Strategic Plan (NSP).

Developed as an effort to gain and maintain control of the borders, the original NSP was a multi-phased approach to deploying and focusing USBP resources on areas with the greatest illegal entry of people and goods. The NSP called for a calibrated balance of personnel, aircraft, equipment, technology, and tactical infrastructure. The focus of the NSP was an operational approach known as “Prevention Through Deterrence.” The goal was to place USBP agents and resources directly on the border in order to deter the entry of illegal aliens, rather than attempting to arrest aliens after they had already entered the country (this had largely been the prior approach). According to U.S. Customs and Border Protection (CBP), achieving optimum deterrence would mean that increasing the number of agents and resources in a sector would not result in an increase in the number of unauthorized migrants apprehended in that sector.¹¹

The components of the NSP were ultimately absorbed into a broader “Comprehensive Border Control Strategy” to combat unauthorized immigration, which was released by the Clinton Administration in 1995.¹² This framework outlined a broad new policy emphasizing deterrence to combat unauthorized immigration at the borders, alien smuggling, and visa overstays, thereby

⁷ U.S. Customs and Border Protection, “85 Years of Protected By,” March 23, 2009, at http://www.cbp.gov/xp/cgov/border_security/border_patrol/85th_anniversary.xml.

⁸ The former INS was an agency within DOJ.

⁹ U.S. Department of Justice, *A Secure Border: An Analysis of Issues Affecting The U.S. Department of Justice*, Washington, DC, March 4, 1974, p. 9.

¹⁰ U.S. General Accounting Office, *Border Control: Revised Strategy Is Showing Some Positive Results*, GAO/GGD-95-30, December 1994, pp. 5-8.

¹¹ U.S. Customs and Border Protection, *Performance and Annual Report: Fiscal Year 2003*, p. 41.

¹² The White House, “Deterring Illegal Immigration: Memorandum for the Heads of Executive Departments and Agencies,” 60 *Federal Register* 7885, February 7, 1995.

making Prevention Through Deterrence the overall border protection policy.¹³ The Prevention Through Deterrence policy was embraced by Congress, with both the House and Senate Appropriations Committees in 1996 directing the INS to hire new agents, to reallocate USBP agents stationed in the interior to front-line duty at the border, and to fill the interior office positions with investigative staff.¹⁴

Congressional concern with terrorism and border security rose following a series of terrorist attacks in the 1990s. Starting in 1998, Congress created three commissions to better understand the nature of the terrorist threat facing the nation: the Gilmore Commission, the Bremer Commission, and the Hart-Rudman Commission.¹⁵ The congressional response began with inquiries to the nature of the terrorist threat and the commissioning of several studies, followed by specific, targeted measures to protect the nation following the events of September 11, 2001. The National Commission on Terrorist Attacks Upon the United States, commonly known as the 9/11 Commission, concluded in its final report that funding and completing a “biometric entry-exit screening system” for travelers to and from the United States is essential to national security. The commission noted that the United States has built the first phase of a biometric screening system known as United States Visitor and Immigrant Status Indicator Technology (US-VISIT), and recommended that the “patchwork” of other border screening systems be consolidated with US-VISIT to serve as the basis for a single system to streamline border inspections.¹⁶

Immediately following the airplane-based attacks of September 11, 2001, early legislative action focused on airline security, visa and border security, and maritime security.¹⁷ Examples of legislation included the USA PATRIOT Act¹⁸ and the Enhanced Border Security and Visa Reform Act of 2002.¹⁹ Both of these Acts encouraged the more expeditious development of an automated entry and exit data system, and required that biometric identifiers be used in passports, visas, and

¹³ As per the President’s memorandum (see footnote 12), the “Comprehensive Border Control Strategy” consisted of the following key elements:

- “Deterring illegal immigration at our borders
 - i. Flexible border response capacity
 - ii. Strategic use of high technology
 - iii. Strong enforcement against repeat illegal crossers
- Deterring alien smuggling
- Visa overstay deterrence”

¹⁴ U.S. Congress, Senate Committee on Appropriations, Departments of Commerce, Justice, and State, The Judiciary, and Related Agencies Appropriations Bill, 1996, report to accompany H.R. 2076, 104th Cong., 1st sess., S.Rept. 104-139 and U.S. Congress, House Committee on Appropriations, Making Appropriations for the Departments of Commerce, Justice, and State, The Judiciary, and Related Agencies For the Fiscal Year Ending September 30, 1996, and for Other Purposes, report to accompany H.R. 2076, 104th Cong., 1st sess., H.Rept. 104-378.

¹⁵ The official names and dates of creation of the Commissions are as follows: (1) Gilmore Commission, known officially as The Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, created on October 17, 1998 (P.L. 105-241); (2) Bremer Commission, known officially as The National Commission on Terrorism, created on October 21, 1998 (P.L. 105-277); and (3) the Hart-Rudman Commission, known officially as The U.S. Commission on National Security / 21st Century, created on September 2, 1999.

¹⁶ National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report*, Washington, DC, 2004, pp. 385-389.

¹⁷ The Aviation and Transportation Security Act (ATSA, P.L. 107-71) signed on November 19, 2001; the Enhanced Border Security and Visa Entry Reform Act (P.L. 107-143) signed on May 14, 2002; and the Maritime Transportation Security Act of 2002 (P.L. 107-295) signed on November 25, 2002.

¹⁸ P.L. 107-56.

¹⁹ P.L. 107-173.

other travel documents to improve their security. Based in part upon the 9/11 Commission's recommendations, Congress included biometric provisions related to entry/exit control in the Intelligence Reform and Terrorism Prevention Act of 2004.²⁰ Congress also enacted legislation to create the DHS to provide a structural framework for subsequent action, and enacted various pieces of legislation to provide the tools needed to combat the challenges to national security.²¹

The Homeland Security Act of 2002²² merged most interior and border enforcement functions of the Department of Agriculture, the INS, and the U.S. Customs Service to form the Directorate of Border and Transportation Security (BTS) within the Department of Homeland Security. Using the authority given by Congress in the Homeland Security Act, the Administration subdivided BTS and placed the border enforcement functions, including the USBP, within CBP. This consolidated all the agencies charged with border enforcement duties with the overarching goal of enhancing security by allowing for the freer sharing of information and resources among all the organizations with a presence at the border.²³ After the reorganization of federal agencies precipitated by the creation of DHS, four main federal agencies are now charged with securing the United States' borders: the U.S. Customs and Border Protection, which patrols the border and conducts immigrations, customs, and agricultural inspections at ports of entry; the U.S. Immigration and Customs Enforcement (ICE), which investigates immigrations and customs violations in the interior of the country; the United States Coast Guard, which provides maritime and port security; and the Transportation Security Administration (TSA), which is responsible for securing the nation's land, rail, and air transportation networks.

Conceptualizing Border Threats

As suggested above, border protection has evolved in response to emerging threats to the border. In some cases, these threats were reduced or eliminated by addressing the underlying factors contributing to the threat (e.g., when the prohibition on alcohol was repealed, the transportation of alcohol across borders became a legal, regulated import/export process, rather than smuggling). However, in response to new threats, policymakers have had to reassess the existing approaches to border protection.

A useful conceptualization that some scholars have proposed is illustrated in **Figure 1** below. This conceptualization yields different levels of protection based on the interaction of border threats and deployment of border protection resources. **Figure 1** suggests that as threat level becomes more severe, so does the level of desired protection. However, to achieve a higher level of protection, the deployment of border protection resources by the government must also increase. "Border control" measures provide for protection against the illegal entry of people and goods, which are conceived of as a lower-level threat. "Border safety" measures are those that may be implemented to offer protection against mid-range threats, such as violence, criminals, smuggling, and the like. Finally, "border security" includes measures used to thwart terrorism. Theoretically, a flexible border structure would be capable of adjusting to the existing threats in order to provide the necessary level of protection.

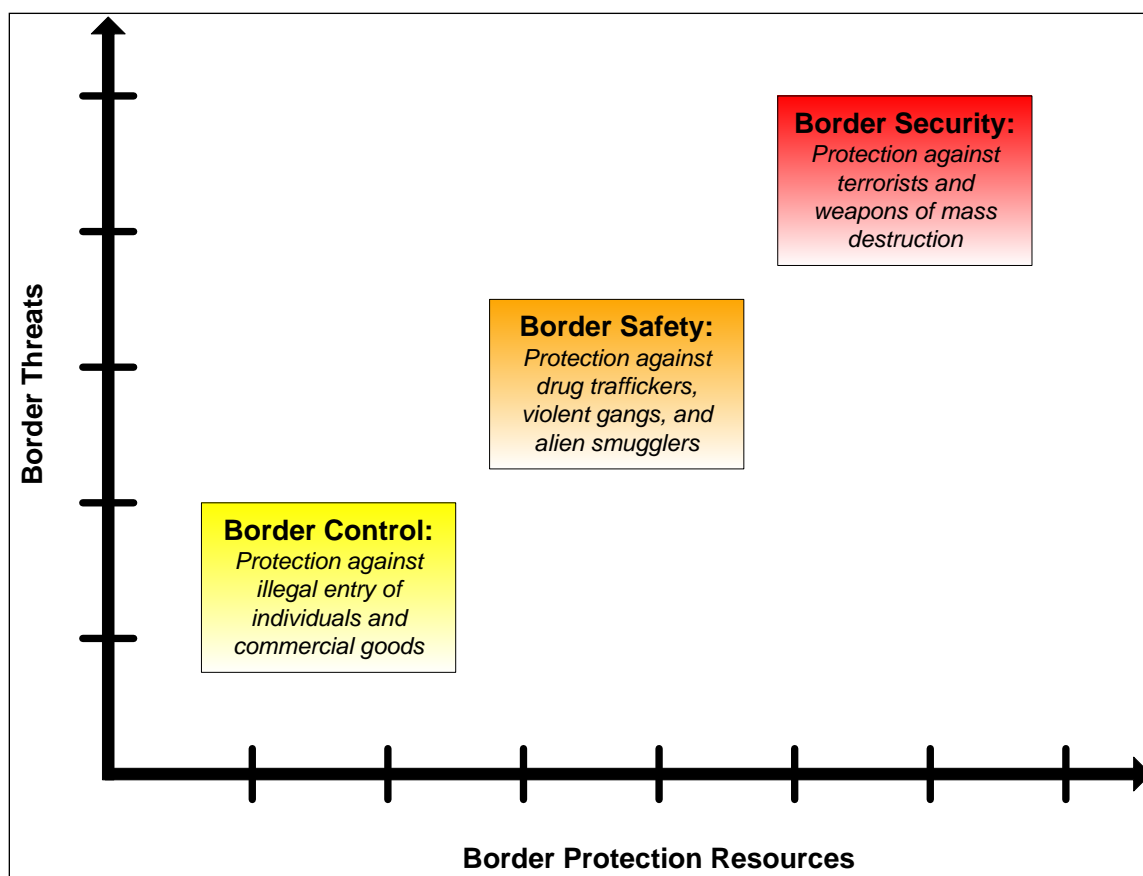
²⁰ P.L. 108-458.

²¹ For example, the USA PATRIOT Act, known officially as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, was passed on October 26, 2001 (P.L. 107-56). In addition, Congress passed pieces of legislation such as the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA, P.L. 108-458) and The Secure Fence Act (P.L. 109-367).

²² P.L. 107-296.

²³ For a more detailed account of the formation of DHS, see CRS Report RL31549, *Department of Homeland Security: Consolidation of Border and Transportation Security Agencies*, by Jennifer E. Lake.

Figure 1. Levels of Border Protection



Source: CRS adaptation of information in Bert Tussing, "New Requirements for a New Challenge: The Military's Role in Border Security," *Homeland Security Affairs*, vol. 4, no. 3 (Summer 2008), pp. 1-22.

For congressional policymakers, several additional elements complicate this framework. First, given the relatively simple parameters, it is unclear what type of security functions would be required as border threats continue to increase. Presumably, homeland security-related law enforcement functions could potentially begin to spill over into national defense functions. For example, some policymakers have proposed such protection through calls for a National Guard presence along the Southwest border.²⁴ Defining the outer boundaries of this framework is therefore important.

An element not included in the threat conceptualization above is the increase in government expenditures required by elevated levels of protection. Building and maintaining greater protection—be it through technology, manpower, or both—requires increased investments. Moreover, the deployment of resources is likely to result in diminishing returns on investment at some level of expenditure. Given that government resources are inherently finite, deploying more resources to border protection must be weighed against the opportunity cost of deploying those resources to other activities, as well as the risks associated with such reassignment.

Despite its straightforward depiction of escalating threats, another missing element from the conceptualization is the potential tradeoff in market efficiency. The threat conceptualization above suggests higher levels of security for greater threats, but measuring border threat levels is

²⁴ Erin Kelly, "McCain, Kyl Back Bill, Call for Guard on Border," *The Arizona Republic*, April 20, 2010.

an imprecise science at best. Policymakers will likely need to account for the commercial consequences of ever-climbing levels of security at the U.S. border. In the end, balancing the economic impact of increased levels of inspection against hard-to-measure threats requires a calculus that systematically weighs security against commercial interests.

Competing Models: The Fortress and the Complex Organism

For critics and advocates of U.S. border protection policy, there are a host of competing policy alternatives for how to effectively protect the border. While some individuals want more enforcement and stricter admission criteria, others want to lessen these restrictions on cross-border activity. Ultimately, while neither camp is seeking to make the U.S. population less secure, the policy choices for building border protection are rooted in competing visions of what U.S. border policy should look like. These visions can be grouped into at least two camps: (1) a unilateral security model, based on a metaphorical “fortress,” and (2) an interdependence (or cooperation-based) model, based on a metaphorical “complex organism.” The basic premises of these visions are discussed below and subsequently placed in the context of current border security policy. Although most advocates of each model do not subscribe to a pure interpretation of either model, the models serve as useful guides for understanding and analyzing border security policy, as well as how these policies relate to interior activities and, in some cases, foreign affairs.

The Fortress

The first of the competing visions—that of the fortress—is rooted in the notion of protecting a population by establishing a secure perimeter.²⁵ Historically, the fundamental tenet of this security approach was that protection was a unilateral action, providing fortification against outside threats for the population within. Many ancient fortresses were essentially walled-in cities or communities. These communities contained markets and economic activity surrounded by some sort of protective barrier. The barriers would frequently be patrolled by guards who would keep order and maintain a watch for outside dangers. In addition, an ancient fortress would contain at least one gate that would connect the economic and social activity of the fortress interior to those outside.

The fortress metaphor suggests at the very least a patrolled perimeter barrier. In contemporary application along the U.S. border, this element would consist of infrastructure such as fencing, radars, and other technology, along with USBP patrolling activities. Under this paradigm, the interior market is paralleled by the interior of the United States, which must be protected against outside threats such as terrorism, drug-trafficking, human smuggling, and other illicit activity. Moreover, much like the gates of a fortress, ports of entry serve as access points to the interior where authorized guardians, in the form of CBP officers, supervise who is attempting to gain admission and turn back those who are not in legal compliance or are registered threats.

For some observers, including a number of academics,²⁶ the notion of a fortress has been invoked to criticize the border fortification and enforcement-centered border policies. For these critics,

²⁵ Information based upon “fortification.” (2010). In *Encyclopædia Britannica*. Retrieved May 10, 2010, from Encyclopædia Britannica Online: <http://www.britannica.com/EBchecked/topic/214241/fortification>.

²⁶ For example, see Andrew Geddes, *Immigration and European Integration: Towards Fortress Europe?* (Manchester,

fortifications foster ill will toward the United States and actually generate criminal industries based on circumventing such fortifications. In addition, opponents of the fortress model argue that a fortification approach divides communities and local economies that rely on mobility.²⁷ Moreover, they argue that a fortification approach fosters a hostile culture that runs contrary to American values and undermines the legitimacy of the border protection endeavor in the public's mind.²⁸ For supporters of the fortress model, however, an alternative featuring interdependence and reduced fortification introduces a host of vulnerabilities to border protection. An interdependent approach assumes both a willingness to share information and an adequate ability to identify terrorist threats and criminal elements. Moreover, it allows for easy spillover of activities near the border that may otherwise be contained outside the United States. The drug violence in Mexico, for these critics, exemplifies the need for fortifications.²⁹

The Complex Organism

While the fortress model has served as a unifying and coherent model for the current border protection framework, critics believe that the approach ultimately suffers from certain shortcomings.³⁰ Most important of these criticisms is that the fortress model is based on a notion of a world that is not necessarily interdependent.³¹ Moreover, the rigidity of some protective elements in the model (e.g. border fencing) could be characterized as ill-suited to a modern world where threats are flexible and criminal targets quickly adapt. Consequently, another model might be better suited to illustrate the position advocated by some border analysts: the metaphor of the complex organism.

Any complex organism is made up of multiple systems. Each system plays a key role in the organism's survival (be it skeletal, circulatory, respiratory, digestive, immune, or any other). Equally important, however, is the fact that the systems themselves are interdependent. If one of the systems is not functioning correctly, the other systems may suffer. If one of the systems fails completely, the organism itself cannot survive. Moreover, the communication between the systems means that each system can be informed of and compensate for any existing or potential damage or hindrance to another. Therefore, the systems of a complex organism reflect two crucial traits: (1) *interdependence* (or a cooperative nature) and (2) *flexibility* to adjust to changes and trauma. In other words, a successful complex organism is based on dynamic interdependence of parts.

In terms of formulating an overall border protection strategy, proponents of the complex organism model argue that the added value of employing a complex organism paradigm is that it illustrates the potential hazard of looking at the border in isolation. An isolated view tends to result in defining perimeter interactions in hostile terms and responding with militarized tactics focused on a static "front." Such approaches are built around assumptions about one's opponent that do not necessarily hold up in a law enforcement context.³² Border threats are dynamic, frequently

UK: Manchester University Press, 2000).

²⁷ Thomas Frank, "Tensions Rise with U.S.-Mexican Border Fence," *USA Today*, December 29, 2008, online edition.

²⁸ See footnote 27.

²⁹ CRS Report R41075, *Southwest Border Violence: Issues in Identifying and Measuring Spillover Violence*, coordinated by Jennifer E. Lake and Kristin M. Finklea.

³⁰ See footnote 26.

³¹ Colonel Gideon Netzer (Res.), Israel Defense Forces, *A Generic Model for Cooperative Border Security*, Sandia National Laboratories, SAND 98-0505/7, Albuquerque, NM, March 1999.

³² Law enforcement frequently deals with ambiguous situations that cannot be immediately identified or remedied,

decentralized, and respond to market forces, as well as terrorist opportunities, both at the border and in the interior. Consequently, while a fortress paradigm suggests that the border is a defended perimeter to be penetrated, the complex organism paradigm suggest that overlapping systems work in conjunction to expel undesirable elements while facilitating the movements of desirable elements.

While some critics of this approach may contend that it is not as secure as a fortress-based approach, others argue that a complex organism approach may actually lead to greater security in the long run.³³ The reason for such a development is multifold. First, a complex organism paradigm yields a recognition of the interconnection between border systems and those of both the interior and in foreign countries. Second, it also yields greater balance between these systems because a balance is essential for the efficient operation of the whole. Third, it distributes the risk throughout the organism, rather than shifting it all to the border, thereby creating enhanced security through security overlaps and backups. Finally, a recognition of the larger context allows the motivating forces—the supply and demand for both legal border crossings as well as illegal border violations—to be addressed through non-enforcement channels, thereby reducing the pressure on the border protection mechanisms.

Unilateralism and Cooperation in Border Protection

The fundamental distinction between the two paradigms discussed above is their approach to threats. While the fortress paradigm takes a unilateral approach to addressing outside threats, the complex organism paradigm is anchored in cooperation—both domestically and internationally. The difference between these approaches is that unilateralism results in fortifications and actions contained to one's own sovereign territory, while cooperative arrangements extend the zones of protection into neighboring countries, thereby providing what essentially amounts to a buffer region. Moreover, cooperative arrangements tend to result in improved relations, and thus may provide benefits in increased economic activity and the growth of civil society in the border region. As a report from the Sandia National Laboratory states:

Unilateral methods [of border protection] rely on the use of military or police forces by the national government without regard to activities by the neighboring countries. Borders become fortified zones with observation posts, defensive positions, physical barriers, and heavily armed response forces. Unilateral actions have limits and disadvantages. Military based solutions to border security often have the undesirable effect of increasing tensions between two neighbors.... Confidence, the key factor in a stable relationship, becomes difficult to build.

Cooperation requires a shift in government attitudes and concepts about border security. The model of cooperation means that both states will be better off—the defense of one's own borders will help the neighboring countries and vice versa.... Cooperative border monitoring can help neutralize dangers, diminish conflicts, and reduce tension.³⁴

Yet, cooperation is not without its potential shortcomings; for while the potential benefit of a cooperative relationship may be higher than a unilateral approach, the risks may be higher as well. In cases of adequately structured cooperative relationships, despite any existing mutual interest in border protection over time, the reliance by each neighboring country on the activities of the other to provide for one's own security is fundamentally based on trust. If this relationship

thereby requiring a flexible approach by an officer. A border-related example of such ambiguity might be a case where an unauthorized immigrant informs an apprehending officer that he or she is seeking asylum.

³³ See footnote 31.

³⁴ See footnote 31.

were to deteriorate, either country would become completely exposed to outside threats without some form of unilateral actions and fortifications. Moreover, achieving such cooperation may be difficult or impossible for several reasons: (1) the lack of mutually agreeable interests to maintain the relationship, (2) the lack of one actor's capabilities to enforce its obligations under the cooperative framework, or (3) uncertainty over how full cooperation should be implemented. Consequently, the most successful border protection strategy would likely be one that contained numerous cooperative arrangements based on mutual economic and security interests, but was built on an underlying foundation of unilateral safeguards—as the complex organism paradigm attempts to illustrate.

Many elements of the complex organism are already in place in the U.S. border protection framework. The development of multiagency teams to share information, for example, illustrates the fundamental principles of a complex organism model. Simultaneously, the execution of strategic objectives frequently results in tactics that tend toward the fortress model's unilateral and more static elements. While these blunt instruments may be successful in pockets, the most effective strategy in the long run will likely be one that takes a more comprehensive view and dynamic approach to border threats and the causes of these threats.

Advantages and Disadvantages of a Geographically Focused Border Strategy

Although most policymakers would argue that a comprehensive view of the border is necessary to achieve the most effective border protection, the conceptualization of the border remains significantly tied geographically to the physical perimeter of the United States. In part, the more recent build-up of border-based resources largely the result of a confluence of interior effects being attributed to having external causes. Moreover, the assumption by numerous policymakers has been that by reinforcing the perimeter one can more effectively protect the interior.

The logic of such an approach is apparent, but it rests on assumptions that do not always hold. For example, it assumes that a disproportionate amount of the threat comes from the exterior. However, the high estimated proclivity of visa overstays, as well as the homegrown networks of drug dealers and terrorists, suggests that this notion is incomplete. Also, it assumes that the market forces generating demand for illegal behaviors can effectively be deterred or prevented largely by geo-focused enforcement efforts. Yet, what constitutes barriers for legal travelers usually constitutes a profitable opportunity for criminals (e.g., smuggling). And the adage that “nature hates a vacuum” suggests that with enforcement actions against one set of illegal actors another group will step in to take their place, so long as the profit motive remains.

Despite such problematic assumptions, the appeal of geo-focused approaches to illegal immigration, drug trafficking, and terrorism remain strong. Much of this appeal comes from the concentration of resources that can be built up along the border. In **Table 1**, some of the advantages and disadvantages of focusing enforcement efforts at the border are mapped out against centering those efforts in the interior or abroad.

Table 1. Administrative Advantages and Disadvantages of Geographically Focused Protection Strategies

Possible Pros and Cons, by Location of Intending Migrant

Advantages	Territory	Disadvantages
Foreign Soil		
Extended border/Pre-emptive enforcement		Potentially different political interests/agenda
Greater time preparedness		Limited jurisdiction/requires cooperation
Greater information collection		Potentially negative effects on bilateral relations
Migration flow supply reduction through economic investment		Limited information available
Transit Zone/Border Region		
Concentration of traffic		Limited targeting of visa overstays
Limited geographic area of enforcement		Limited deterrence of unauthorized migration
Concentration of resources		Potentially disruptive to trade
Identity verification and registration capability		Environmental/social/political/cultural consequences domestically
Domestic Soil		
Targeting demand for unauthorized immigrants		Greater security vulnerability
Potentially less disruptive to trade		Cost intensive and greater resource dispersion
More time to assess enforcement actions		Social/political/cultural consequences domestically
		Limited information on unauthorized traffic

Source: Based on CRS analysis of cost/benefits of potential border protection policies.

As **Table 1** shows, concentrating resources along the border is a low-cost/high-yield approach relative to enforcement actions in either the interior or abroad. While all three elements are necessary under any enforcement-based border protection strategy, interior enforcement is more costly because of the large geographic area and the potential disruption to businesses (e.g., worksite enforcement). In the exterior, the lack of compliance with agreements, the potential dissemination of untrustworthy information, and the variation in security strategies serve as potentially large security gaps that make centering enforcement efforts abroad impractical. In other words, geographically focusing one's efforts at the border is likely to yield the lowest amount of security risk without requiring the cooperation of one's neighbor (but does not preclude such cooperation either).

Consequently, the border serves as the geographic focus—as well as the central policy focus—in many efforts to address what many perceive as externally generated threats to homeland security. But in order to be able to assess the effectiveness of any border protection framework and its strategic elements, we must first map out present border protection efforts. The section below discusses the various components of the current border protection framework and how they fit together.

The Current Border Protection Framework

In general terms, a strategy is a set of ways by which one attempts to achieve an advantage over one's adversaries to achieve one's interests or goals. Border officials and Congress have worked to develop a comprehensive strategy for the border to achieve such an advantage over border violators. As previously stated, what has emerged from these efforts has been a generally agreed upon framework of mission and goals, but some might question whether a comprehensive strategy has yet been sufficiently mapped out. The broad framework currently in place generally consists of a QHSR underpinning supported by a collection of agency or function specific strategic elements that show some commonalities.³⁵ The section below identifies the broad framework currently in place and attempts to extract the strategic commonalities of various agency- and function-specific strategic plans relating to border protection. Subsequent sections delve further into the three strategic components of layered security, expanded zone of security, and domain awareness, due to the intrinsic connection of these framework elements to the geographic border itself.

Framework Mission and Goals

The general framework for providing border protection has been outlined through numerous strategic plans put forth by border officials. The current framework for providing border protection embraces many lessons learned through historical responses to threats and executed activities. This framework was most recently compiled in the HSQR.³⁶ Concisely, the mission and goals for border protection among responsible agencies as spelled out in the HSQR may be articulated as follows:

Mission:

- Securing and managing the U.S. borders.

Goals:

- Effectively control U.S. air, land and sea borders.
- Safeguard lawful trade and travel.
- Identify, disrupt, and dismantle transnational criminal organizations.

Assuming the correct implementation, the resulting framework for border protection would essentially create a control point for the flow of people across the U.S. border. The border framework would dam the flow of border violations while providing passages for legal traffic. Although push/pull factors for unlawful behavior would continue to create supply and demand for border incursions, effective border protection would minimize such incursions. Simultaneously, by obtaining operational control over the border, officials would be able to facilitate the legal flow of people, thereby reducing border-related traffic delays.

This broad border framework has been complemented in the interior by several other frameworks for various border-related threats that also constitute threats to the interior. As with the border framework, these interior frameworks are also rooted in enforcement policies. Perhaps most recognized of these policies is the framework for combating unauthorized immigration—an effort known as “attrition through enforcement.” Essentially, this approach promotes tactics and

³⁵ See footnote 1.

³⁶ See footnote 2.

enforces laws that make it more difficult for unauthorized aliens to find employment, receive benefits, and otherwise provide for a gainful existence in the United States.³⁷ Theoretically, with little or no economic opportunities remaining for unauthorized aliens, they would choose to remove themselves from the United States and pursue economic gain elsewhere. Moreover, through information channels potential unauthorized aliens seeking to migrate to the United States would potentially recalibrate the benefit of such a migration. In this way, policymakers have attempted to complement an enforcement-based supply reduction framework at the border with an enforcement-based demand reduction effort framework in the interior.

Strategic Elements

While different DHS publications outline a variety of strategic elements for border protection, general comparisons of their individual strategies reveal commonalities (such a comparison can be found in **Table A-1**).³⁸ Despite the disparate nature of some of these strategic elements, there appear to be five common strategic elements that emerge from these various agency documents. Of these five strategic elements, two of them can be considered organizational elements in relation to border protection agencies, while the remaining three tend to be more operational in nature with regard to border activities. Moreover, the organizational elements tend to be more agency-oriented, while the operational elements tend to be more geographically oriented. However, all five strategic elements serve as components of the general border protection framework. These elements can be summarized as follows:

Organizational Strategic Elements:

- Assuring policy direction, coordination, and continuity of operations through centralized DHS leadership.
- Promoting a shared culture within the agency to improve management and achievement of goals.

Operational Strategic Elements:

- Deploying layered security through infrastructure, manpower, and other force multipliers.
- Maximizing domain awareness to manage risk by leveraging information, intelligence, and technology.
- Expanding the zone of security by fostering international and domestic cooperation and partnerships.

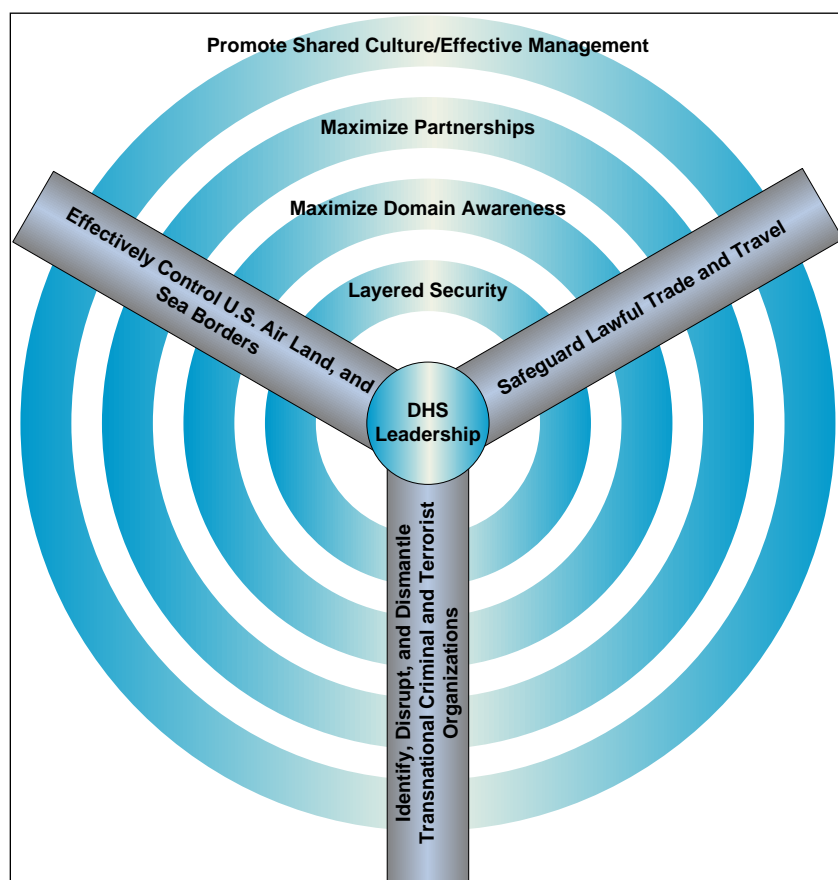
From an analytical perspective, one can understand the interaction of the mission, goals, and strategic elements of border protection as interconnected pillars and cross-functional streams. As depicted in **Figure 2**, the three border goals of prevention, facilitation, and criminal dismantlement serve as the central pillars through which the five strategic elements flow. Because these strategic elements can serve all three pillars, the streams of information become cross-functional and circular—thereby providing a feedback loop that informs the achievement of these

³⁷ For example, see Jessica M. Vaughn, *Attrition Through Enforcement: A Cost-Effective Strategy to Shrink the Illegal Population*, Center for Immigration Studies, CIS Backgrounder, Washington, DC, April 2006.

³⁸ These strategic documents include (but are not necessarily limited to): U.S. Department of Homeland Security, *Quadrennial Homeland Security Review Report: A Strategic Framework for a Secure Homeland*, Washington, DC, February 2010.; U.S. Customs and Border Protection, *Protecting America: 2005-2010 Strategic Plan*, May 2005; U.S. Customs and Border Protection, Office of Field Operations, *Securing America's Borders at Ports of Entry: Strategic Plan FY2007-2011*, September 2006; U.S. Border Patrol, *National Border Patrol Strategy*, August 2007.

goals. For example, a technological advancement that improves the ability to screen for criminals among travelers may also improve the speed with which legitimate travelers can pass through ports of entry. Central to the achievement of these goals is the DHS leadership—from there, the strategic elements extend outward, from those elements over which these agencies have more control toward those strategic elements that are also subject to outside entities for success. This “sphere of influence” approach does not imply that one strategic element is more important than another—indeed, all the elements are necessary for successful execution and the long-term accomplishment of the border protection mission.

Figure 2. Border Protection: Overarching Goals and Cross-Functional Strategic Elements



Source: Based on CRS analysis of information published by CBP, including U.S. Department of Homeland Security, *Quadrennial Homeland Security Review Report: A Strategic Framework for a Secure Homeland*, Washington, DC, February 2010.; U.S. Customs and Border Protection, *Protecting America: 2005-2010 Strategic Plan*, May 2005; U.S. Customs and Border Protection, Office of Field Operations, *Securing America's Borders at Ports of Entry: Strategic Plan FY2007-2011*, September 2006; U.S. Border Patrol, *National Border Patrol Strategy*, August 2007.

Dilemmas of Border Protection Policies

Despite the straightforward logic of these strategic elements, there are policy dilemmas regarding their implementation. Policymakers generally make decisions regarding priorities, risks, opportunity costs, and the like. Border policy dilemmas, however, are not unique to the current framework, but would be true of any border protection strategy. Thus, in broad terms the dilemmas of formulating a border protection policy can be specified as follows:

- *The law of diminishing returns*—at some point, for each additional unit of any single border protection measure that is added, the additional security provided by that unit becomes less relative to the previous unit. Therefore, the return on the investment security decreases.³⁹
- *Heightened goal conflict*—with increasing numbers of border protection measures, the tightened security begins to impede the legitimate flow of desired people and goods (as well as resulting in possible incursions on privacy and civil liberties).
- *The opportunistic nature of border incursions*—the more hardened one aspect of the border becomes, the more likely that attention will shift to a softer target and/or use different means. To reduce cost and risk of operations, border violators desire to use targets and methods that have been used successfully before, can be easily taught and replicated, and have a high probability of success and impact. Frustrating any or all of these goals could lead the violator to abandon the operation.

While border agencies constantly strive to achieve a balance that mitigates these dilemmas, these fundamental problems lie at the heart of many border protection debates and the efforts to develop a comprehensive border protection approach.

While all five of the strategic elements from above are most likely crucial to the successful execution of the broader framework, the organizational elements are geared more towards the internal functions of DHS and its component agencies. Consequently, the two organizational strategic elements lie outside the scope of this paper for any further discussion, but can be found to a greater extent in CRS Report R40602, *The Department of Homeland Security Intelligence Enterprise: Operational Overview and Oversight Challenges for Congress*, by Mark A. Randol. The remaining three geographically oriented strategic elements, however, have been the target of a large amount of resources distributed by Congress and have been the focus of much public attention. Due to the intrinsic connection of these three strategic elements to the geographic border itself, the components of layered security, expanded zone of security, and domain awareness are discussed in detail in the sections below.

Layered Border Security

The deployment of layered security has been the most visible aspect of the post-September 11 border protection framework. In part, this visibility has stemmed from the significant resources that have been devoted to deploying these layers and from the objections of opponents to specific measures (e.g., fencing along the Southwest border). Consequently, divisions have sprung up between supporters of visible, proactive tactics in layered security, and opponents who wish for more subtle and non-invasive tactics to achieve the same layered security.

Operating Principles

The principle underlying the deployment of layered security is to maximize the probability of apprehending an intending violator of U.S. law (e.g., unauthorized border crosser). Layering

³⁹ For example, if layers of fencing are being deployed, the second layer of fencing is likely to provide a greater return on investment through a drop in incursions than the 10th layer of fencing, since by the 10th layer there will likely be far fewer incursions to prevent.

identifies key points of vulnerability wherever they exist (including with travelers, staff, cargo, vehicles, processes, documents, and locations) and turns them into targets of opportunity for interdiction.⁴⁰ It provides a series of interdependent, overlapping, and reinforcing redundancies designed to raise the odds that unlawful activities could be intercepted—also raising the risks and costs to law violators and serving both an interception and deterrence function. Each individual tactic carries a certain probability of apprehending an intending violator.⁴¹ For example, while some violators may be able to successfully scale fencing along the border, others may be physically unable to achieve such a task. Similarly, roving patrols and interior checkpoints have some probability of catching a certain amount of unauthorized border crossers.

While each security layer has a different probability of preventing a border incursion, the deployment of multiple layers should reduce the overall probability of unauthorized border crossings. The basic idea behind this approach is that while each tactic has vulnerabilities in it (i.e., a means for a potential violator to overcome the tactic), the vulnerabilities for each layer do not necessarily align. Thus, an individual may exploit the vulnerability in some layers but find themselves blocked by other layers.⁴² The more layers of security, the lower the probability of finding a successful means of incursion (and the higher the probability of successful interdiction).

Unilateral Monitoring Versus Cooperative Monitoring

When applied to the concept of layered security, the previous discussion of cooperation and unilateral approaches can be illustrated to demonstrate the potential value that cooperation adds to domestic security. In this application, the use of monitoring zones along the border demonstrates the incentive each party has to cooperate due to the mutual gains in protection. From a conceptual standpoint, unilateral monitoring mechanisms can be divided into three monitoring zones located within the United States that act together as a single integrated system.⁴³ As shown in **Figure 3**, a detection zone buttresses the border, followed by an identification zone, which allows for determination of proper response to the threat. Finally, a reaction zone allows for the interdiction of the threat incursion. Using various threats under law⁴⁴ and regulation,⁴⁵ border officials can operate seamlessly across these zones and have a relatively wide range of geographic latitude for threat reaction.⁴⁶ Because the focus is on outside threats, the detection and warning systems for incursions are placed as close to the border as possible to maximize the identification and reaction time for border officials.

⁴⁰ Bartholomew Elias, *Airport and Aviation Security: U.S. Policy and Strategy in the Age of Global Terror* (Boca Raton, FL: Auerbach Publications, 2010).

⁴¹ See footnote 40.

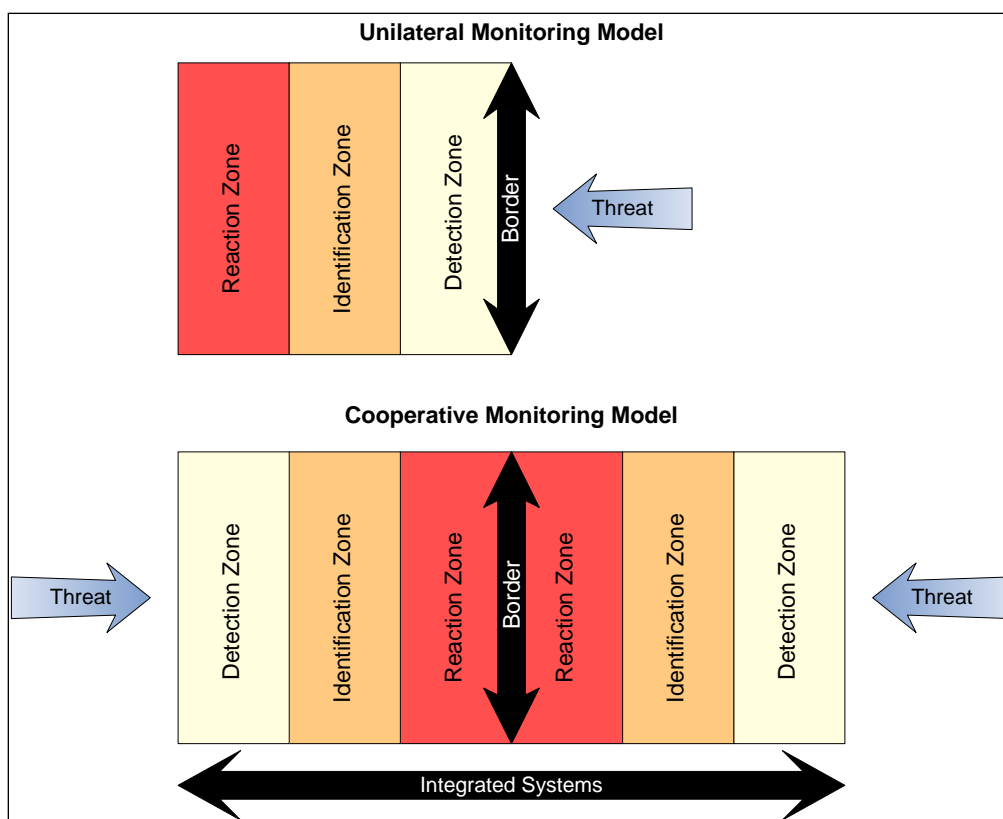
⁴² This layering is sometimes referred to as a “Swiss Cheese Model” (see footnote 40).

⁴³ Two assumptions are made in this statement for the sake of illustrating the model. First, it assumes that the operational technological components of layered security exists and are fully deployed. In reality, the deployment of several technological systems have been marred by set-backs and development complexities. Secondly, were such systems fully deployed, they would likely be capable of detecting a host of activities across the United States border as well.

⁴⁴ Between ports of entry, the explicit authorities of USBP Agents are derived mainly from 8 U.S.C. § 1225 and 8 U.S.C. § 1357.

⁴⁵ Regulations spelling out the powers and duties of CBP field officers are found mainly in 8 C.F.R. § 287.

⁴⁶ USBP is generally authorized to have access to private lands, but not dwellings, that lie within a distance of 25 miles from any external boundary of the United States. In addition, the law gives USBP agents the authority to search, without warrant and within a reasonable distance from the external boundary of the United States, any vehicle for aliens (8 U.S.C. § 287(a)(3)). Reasonable distance is defined by regulation to mean “within 100 air miles from any external boundary of the United States or any shorter distance which may be fixed by the National Border Patrol Chief of USBP, or the Special Agent in Charge of ICE” (8 C.F.R. § 287.1(a)(2)).

Figure 3. Unilateral and Cooperative Monitoring Models

Source: CRS Presentation of information presented in Colonel Gideon Netzer (Res.), Israel Defense Forces, A Generic Model for Cooperative Border Security, Sandia National Laboratories, SAND 98-0505/7, Albuquerque, NM, March 1999, pp. 13-15.

By contrast, the cooperative monitoring system contains a different construct for its border zones. As the depiction of a cooperative model in **Figure 3** shows, the three border monitoring zones are actually reversed in order—the reaction zone buttresses the border and the identification zones are placed furthest away. The logic of such a reversal is that under a cooperative approach the threat is actually bidirectional, coming from both abroad and from within. Therefore, the identification process is also bidirectional. The system looks to detect and identify potential incursions originating from within the United States and directed at its neighbor, as well as potential threats originating from its neighbor. Moreover, each neighboring country has its own monitoring zones that mirror those of the United States. Through coordinated security arrangements, technologies, and communications channels, the United States' neighbor also detects and identifies threats directed at the United States from within, and responds prior to the threat reaching the border. Yet, as a redundancy (or added layer of protection), the United States' reaction zone against the border allows for immediate response should its neighbors' efforts fail. Through such integrated systems, bidirectional detection, and mirrored monitoring zones, the cooperative approach allows both the United States and its neighbors to effectively expand its borders and offer improved protection of its sovereign territory.

Secure Border Initiative

In terms of concrete applications of layered border protection principles, the most prominent example in the United States has been the Secure Border Initiative (SBI), which has been a

central component in the U.S. government's layered security approach. Launched in November 2005, the SBI is a multiyear plan established by the DHS to secure America's borders and reduce illegal cross-border activity by deploying a mix of infrastructure, technology, and manpower.⁴⁷ SBI and its various components tend to constitute a more unilateral approach to providing border protection. It provides for "defense-inspired" fortifications along the border that are designed to respond to incoming threats from outside the United States. As such, SBI mirrors the historical approach taken by border officials, which generally focused security on incoming threats to the United States.

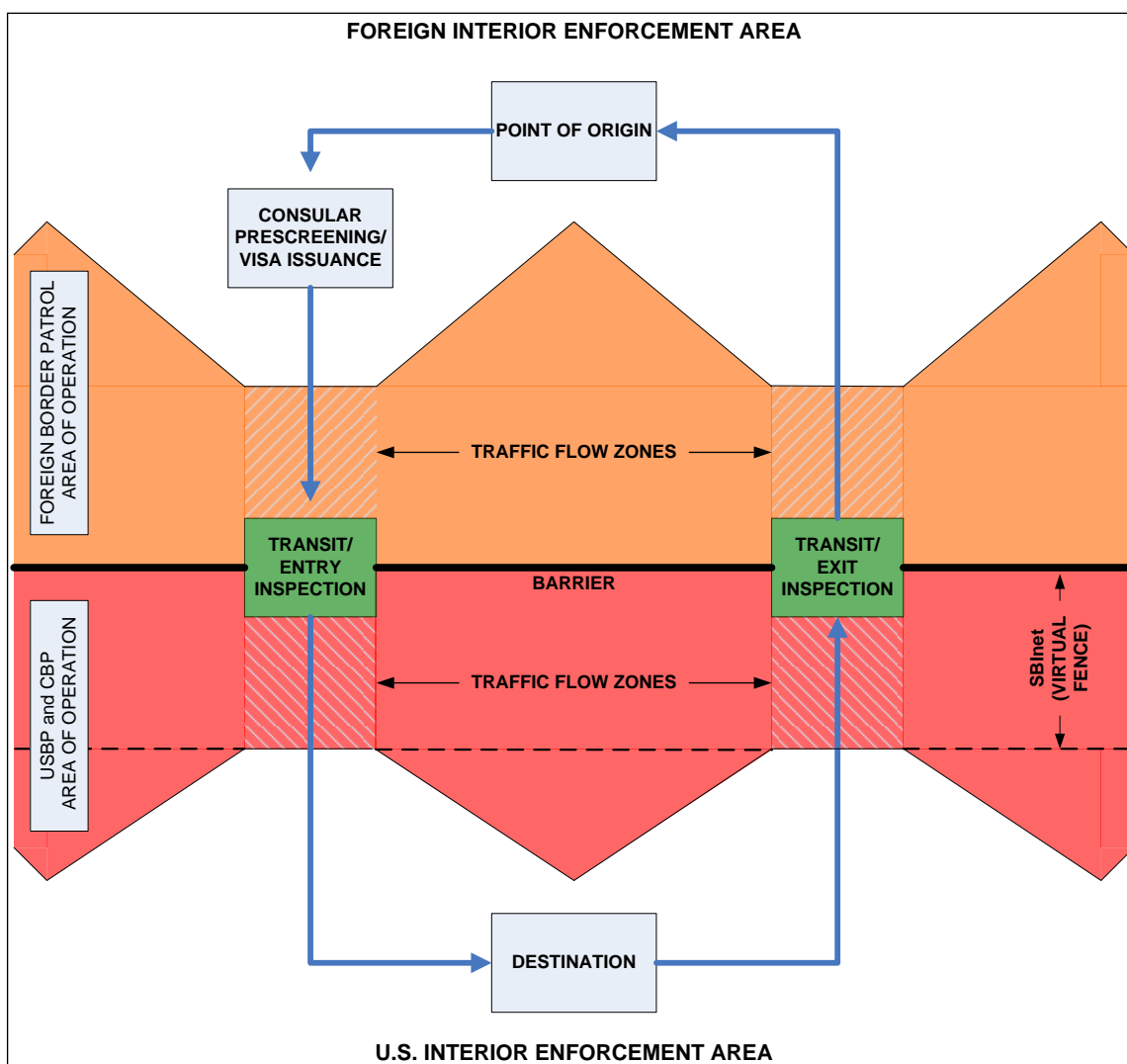
The elements of manpower, infrastructure, and technology under SBI each constitute a layer of security, and in the case of the manpower, the layer can be further broken up into multiple layers (e.g., patrols along the border, interior checkpoints). The SBI Program Office has been responsible for constructing fencing required under the Secure Fence Act, as well as developing and deploying the technology component of the *SBI_{net}* initiative—commonly referred to as "virtual fence." Under SBI, full operational control of the border would occur through a mix of barriers (natural and man-made), detection equipment, and manpower. The level of deployment of these components would be based on risk assessments and other determinations for what would be necessary for gaining operational control.

SBI raises the costs of illicit crossings along the border between ports of entry. While CBP acknowledges that vehicle and pedestrian barriers can be crossed by determined individuals, the agency contends that the significant value added by these barriers comes from the delays they cause to any attempted illegal crossings.⁴⁸ Such delays create an increased probability of interdiction. The barriers also theoretically force law violators to adjust their behaviors, since the placement of such barriers essentially diverts traffic either out toward remote locations (where significant natural impediments to movement greatly enhance the probability of interdiction) or toward POEs. The net effect of such measures—and the one that CBP desires—is that an increased proportion of border activity gets funneled to the areas where the probability of interdiction is the greatest. These security layers at ports of entry are then further reinforced by the USBP through interior checkpoints set up in targeted traffic zones that run higher risks of serving as smuggling corridors. In essence, legal and illegal transportation channels become increasingly merged, and border agencies can focus an increased share of attention on screening or interdicting individuals attempting to defraud inspections by CBP officers. This funneling process can be seen in **Figure 4**. Approaches to security at ports of entry are discussed in greater detail below in the section on maximizing domain awareness.

⁴⁷ The SBI program was derived directly from a predecessor with similar goals known as America's Shield Initiative (ASI). CBP began developing ASI in June 2003. The goal of ASI was to improve and update the previous system known as Integrated Surveillance Intelligence System (ISIS). In 2005, ISIS was formally subsumed under ASI.

⁴⁸ Based on CRS discussions with USBP officials in El Paso, TX, on December 1, 2008.

Figure 4. Layered Border Security in the Secure Border Initiative



Source: CRS analysis and presentation of administrative strategies and operational efforts, including U.S. Customs and Border Protection, Office of Field Operations, *Securing America's Borders at Ports of Entry: Strategic Plan FY2007-2011*, September 2006; U.S. Border Patrol, *National Border Patrol Strategy*, August 2007.

Notes: While this depiction shows funneling only toward ports of entry, funneling toward remote locations is also possible, because such locations add time delays to any border incursion attempts (thereby increasing the possibility of interdiction). Additionally, while the above figure depicts traffic for land borders and POEs, the same layering and funneling can be applied to air and marine traffic as well.

Expanding the Borders

The notion of expanding the border has been a fundamental component of the border protection framework. From a practical standpoint, this means pushing information-gathering and traffic control abilities away from the geographic border to areas both in foreign countries and internally in the United States. The most common example of a border extension policy is the issuance of visas at consulates abroad. This practice allows for screening of individuals who wish to come to the United States and gate-keeping to control the traffic flows. Other practices that are becoming more visible are international law enforcement information-sharing efforts, as well as the

development of pre-inspection points staffed by U.S. officials. On the whole, these efforts provide the United States with a buffer zone for identifying traffic bound for the United States, which should allow greater accuracy in identifying potential threats, as well as facilitating and safeguarding legal flows of traffic. Generally, such outward border expansion efforts are achieved through bilateral or multilateral agreements with foreign governments.

The other side of border expansion is the broadening of enforcement activities into the interior of the United States. To a small extent, this principle is reflected in the USBP's authority to patrol within a reasonable distance of the border, including on private lands with 25 miles of the border.⁴⁹ But the main way that such expansion is achieved is through the sister agency relationship between CBP and ICE. While CBP serves as a border enforcement agency, ICE supports this mission by conducting investigations. The TSA and USCG also provide some core border enforcement functions and work closely with CBP and ICE. One of the central ideas behind the development of DHS was that through a centralized leadership, the expansion of the border would become more seamless through information sharing and cooperation.

Border threats have compelled policymakers and government agencies alike to look for additional solutions to enhance border expansion efforts. As a result, numerous border expansion initiatives and partnerships have been pursued. Interagency partnerships have provided a largely seamless integration of border enforcement with interior enforcement. These efforts have taken place at four different levels: (1) federal, (2) state and local, (3) international, and (4) community. Consequently, the strategic element of expanding the border is an effort to draw on the resources of mostly non-border specific entities to further enhance the efforts to achieve the goals of the border protection framework. The sections below discuss some partnership efforts that have been made at each of these levels.

Federal Partnerships⁵⁰

As part of the response to the 9/11 attacks, Congress began the statutory process of rebuilding some of the relationships and authorities between a number of intelligence and law enforcement agencies. The 9/11 Commission suggested that the failure to share intelligence and resources had been a key element in the success of the attacks and therefore recommended that greater information sharing be facilitated. While the congressional response included some institutional reconstruction (such as the CBP/ICE restructuring and the formation of DHS), it also called for the creation of more partnerships between existing entities. Strategically, such partnerships are cross-cutting, by not only expanding the reach to enforce border incursions, but also by maximizing domain awareness through information sharing. This information sharing allows for better risk assessments and targeting of resources.

Border protection partnerships developed at the federal level tend to fall into two general (and frequently overlapping) camps: enforcement and intelligence. For the enforcement partnerships, one of the more prominent examples is the initiative to create Border Enforcement Security Task Forces (BEST). The BEST initiative consists of a series of multi-agency investigative task forces, of which ICE is the lead agency. They seek to identify, disrupt, and dismantle criminal organizations posing significant threats to border security. Other agency participants include CBP, the Drug Enforcement Administration (DEA), the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Federal Bureau of Investigation (FBI), USCG, and the U.S. Attorneys

⁴⁹ 8 U.S.C. Section 1357(a)(3).

⁵⁰ For more information on federal partnerships within the intelligence community, see CRS Report R40602, *The Department of Homeland Security Intelligence Enterprise: Operational Overview and Oversight Challenges for Congress*, by Mark A. Randol.

Offices, and state and local law enforcement. Moreover, the Mexican law enforcement agency Secretaria de Seguridad Publica is a partner along the southern border. The Royal Canadian Mounted Police and Canadian Border Services Agency are partners on the northern border.

A well-known example of federal partnerships for border intelligence is the El Paso Intelligence Center (EPIC). EPIC was established in 1974 as an intelligence center to collect and disseminate information relating to drug, alien, and weapon smuggling in support of field enforcement entities throughout the region. Following 9/11, counterterrorism also became part of its mission. EPIC is jointly operated by the DEA and CBP. Today, EPIC is a fully coordinated, multi-agency tactical intelligence center supported by databases and resources from member agencies. Its online query capability consists of 33 federal databases, six commercial databases, and its own internal database. EPIC operates a 24/7 watch program manned by special agents, investigative assistants, and intelligence analysts to provide timely tactical intelligence to the field on request.⁵¹ Federal partnerships such as BEST and EPIC thus serve to overcome the pre-9/11 institutional blockages to intelligence sharing at the federal level and to expand border enforcement across the federal government.

State and Local Partnerships

In an effort to expand the reach of immigration enforcement, the Immigration and Nationality Act (INA) includes provisions that allow for the deputization of state and local law enforcement officials to enforce immigration law—actions that are normally under the sole jurisdiction of the federal government. Currently, there are express provisions in federal law that provide state and local law enforcement the authority to assist federal officers with the enforcement of immigration law under certain circumstances. Such authorities were enacted into law in 1996 in §439 of the Antiterrorism and Effective Death Penalty Act (AEDPA; P.L. 104-132) and §133 and §372 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA; P.L. 104-208). In addition to the provisions enacted in AEDPA and IIRIRA, the DHS has numerous initiatives with state and local law enforcement agencies to facilitate the investigation, arrest, and apprehension of foreign nationals who have violated the law.

One of the broadest grants of authority for state and local immigration enforcement activity stems from §133 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which amended INA §287 (8 U.S.C. §1357(g)). Section 1357(g) permits state and local entities to enter into Memoranda of Agreement (MOA) with ICE to enforce immigration law (as specified in the MOA).⁵² The Criminal Alien Program (formerly known as the Alien Criminal Apprehension Program) was established in 1991 by the former INS. Although it has evolved since its inception, the primary purpose of the program has remained—the identification of criminal aliens. Under the current program, criminal aliens are identified by immigration officials as they are incarcerated, but prior to their release. By identifying criminal aliens while they are serving a criminal sentence, DHS, in conjunction with the Department of Justice (DOJ), is able to facilitate the removal of criminal aliens while they are in state or federal custody.⁵³

⁵¹ Agencies represented at EPIC include ICE; U.S. Coast Guard; U.S. Secret Service; the Departments of Defense (DOD) and the Interior; FBI; Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); U.S. Marshals Service; Federal Aviation Administration, National Drug Intelligence Center; Internal Revenue Service; National Geospatial–Intelligence Agency; Joint Task Force–North; Joint Interagency Task Force–South; Texas Department of Public Safety; Texas Air National Guard; and the El Paso County Sheriff’s Office.

⁵² For more information, see CRS Report RL32270, *Enforcing Immigration Law: The Role of State and Local Law Enforcement*, by Lisa M. Seghetti, Karma Ester, and Michael John Garcia.

⁵³ See footnote 52.

State and local cooperation reinforces other components of the border protection framework. However, it has not been without controversy, as it allegedly has drawn some resources away from local law enforcement to focus energy on immigration issues. The use of 287(g) authority has been viewed in some cases as unlawful, and critics contend these deputization efforts blur the line between federal and state functions and authorities. As such, the state and local partnerships remain a contentious element in the border security framework.

International Partnerships

The United States has sought to expand its borders by harmonizing its immigration and security policies with those of other countries. These efforts have also included agreements to share data and attempts to allow for prescreening by U.S. officials on foreign soil. High profile efforts such as the Mérida Initiative⁵⁴ have received increased attention, but efforts to standardize security standards are ongoing for numerous other areas as well. For example, in the wake of the attempted terrorist attack on Delta Flight 253 of December 25, 2009, DHS has attempted to build a global aviation security resolution. By building numerous regional resolutions—an effort that DHS Secretary Napolitano has been actively involved in—DHS reportedly hopes to lift aviation standards worldwide to the level of the United States. By having other states establish their own “no-fly lists” and other anti-terrorism mechanisms, DHS would hope to achieve an added layer of security while simultaneously expanding the border protection zone of the United States.⁵⁵

In previous years, the United States and Canada have jointly taken various measures to better secure the shared border while simultaneously preventing disruption to the flow of people and trade. While such activity dates back to 1995, subsequent efforts include a 30-point plan, commonly referred to as the “Smart Border Accord” (signed on December 12, 2001). Other attempts to increase border security between the U.S. and Canadian governments include the 1999 *Canada-U.S. Partnership Forum* (CUSP) and the February 24, 1995, joint accord, *Our Shared Border*. The U.S. and Canadian governments continue to implement the provisions in the Smart Border Accord and have greatly expanded trusted traveler programs such as NEXUS. However, negotiations between the U.S. and Canada over two proposed pre-clearance pilot programs were reportedly abandoned by DHS due to sovereignty issues and concerns about Canadian legal restrictions on Customs and Border Protection officers’ authorities relating to arrests, fingerprinting, and other activities.⁵⁶

Another recent development in border expansion partner-building efforts has been the development of the Fast Low Risk Universal Crossing (FLUX) alliance. The FLUX alliance is a multilateral governmental partnership to expedite and secure international travel by establishing an automated border passage program for registered travelers. The FLUX alliance currently allows U.S. and Dutch citizens to participate in each others’ registered traveler programs: Global Entry in the United States and Privium in the Netherlands. In exchange for allowing security officials to conduct background checks and interviews with applicants, U.S. Global Entry participants can apply for the Dutch Privium Program, and Dutch Privium participants can apply to enroll in Global Entry. Currently, there are no other countries participating in the FLUX alliance.

⁵⁴ For more information, see CRS Report R40135, *Mérida Initiative for Mexico and Central America: Funding and Policy Issues*, by Clare Ribando Seelke.

⁵⁵ Mickey McCarter, “DHS Aims for Global Aviation Security Resolution,” *Homeland Security Today*, April 29, 2010.

⁵⁶ U.S. Government Accountability Office, *Various Issues Led to the Termination of the United States-Canada Shared Border Management Pilot Project*, GAO-08-1038R, September 4, 2008.

Although not directly a foreign partnership, the security measures implemented for the Visa Waiver Program (VWP) also reflect the outward border expansion.⁵⁷ In 2007, Congress mandated the creation of the Electronic System for Travel Authorization (ESTA) as a mechanism to increase the security of the VWP.⁵⁸ ESTA was developed to determine whether aliens are eligible to travel to the United States under the VWP and whether they pose any law enforcement or security risks. As of January 12, 2009, all aliens traveling under the VWP by air or cruise ship are required to use ESTA to electronically provide biographical information,⁵⁹ so DHS is able to make pre-embarkation eligibility determinations by checking the relevant databases and watchlists.⁶⁰

Community Partnerships

One of the criticized elements of developing partnerships to expand the border has been the fostering of community relationships. Although agencies involved in border protection, such as ICE, have worked closely with certain businesses like banks in their investigations, some advocates claim there is an insufficient effort by border officials to strengthen community ties.⁶¹ These advocates claim that border officials and private advocacy groups have on occasion each viewed the other as an obstacle to achieving their respective goals.⁶² Yet, each group can serve to benefit the goals of the other, especially when unlawful immigrants are fearful about approaching authorities with information regarding criminal activities. Moreover, working in close cooperation between border officials and community groups can serve to alleviate the negative perceptions sometimes fostered by enforcement activities of agencies and the occasional unprofessional conduct of a few federal officials. While some officials may contend that extensive partnerships with certain community organizations could hamper other border protection efforts (e.g., misuse of information provided, pressure to pull back on certain intelligence gathering and enforcement activities), others might contend that the benefits of these partnerships have yet to be fully realized. Consequently, deeper partnership with community groups remains a key area for potential future growth of border protection.

Maximizing Domain Awareness: Information Collection, Verification, and Leveraging

The lynchpin of the current border protection framework is maximizing domain awareness. Obtaining information on who individuals are, where they are, and what they intend to do offers the potential for border protection agencies to (1) prevent or intercept unlawful activities with advance notice, and (2) possibly identify networks and patterns to build intelligence. Domain

⁵⁷ For more information on VWP see CRS Report RL32221, *Visa Waiver Program*, by Alison Siskin.

⁵⁸ ESTA was created by §711 of the Implementing the 9/11 Commission Recommendations Act of 2007 (P.L. 110-53), signed into law on August 3, 2007.

⁵⁹ The following pieces of information are required inputs into ESTA in order to receive an authorization:

- biographical information including name, birth date, country of citizenship, country of residence, telephone number;
- passport information including number, issuing country, issuance date, and expiration date; and
- travel information including city where departing from, flight number, and address while in the United States.

⁶⁰ A person is not required to apply for his or her own travel authorization under ESTA. Friends, relatives, personnel in the travel industry, and other third parties may apply for the traveler.

⁶¹ Based on CRS discussions with immigration advocates in El Paso, TX, on December 5, 2008.

⁶² See footnote 61.

awareness, therefore, is not merely the act of observing the environment, but also gaining knowledge on which actors represent threats and which constitute benign transit. Indeed, intelligence activities constitute the cornerstone of many homeland security activities, and intelligence lies at the center of the interdependence between government and private sector systems. In essence, the intelligence system can be described as analogous to a central nervous system, where a network of data-gathering nodes (or “nerves”) send feedback to a more centralized center (“brain”) for analysis and information distribution. As such, gathering information on travelers at the border serves a highly useful function, as it constitutes a natural and efficient collection point for information gathering and providing feedback to intelligence analysts. The intelligence mechanism, in turn, can provide decision-making on which individuals to filter out and which individuals to allow through.⁶³

Obtaining Information at Ports of Entry

As with the Secure Border Initiative (SBI) between ports of entry, at POEs there is similarly a reliance on infrastructure, technology, and manpower. This mix is employed to pursue all the goals of border protection, and numerous tactics are used to provide for layered security, such as document inspection, questioning, contraband inspection dogs, and the like. But a growing share of activity is devoted to information collection that can be used for intelligence support. In essence, determining and tracking the identity of travelers has become the main method for achieving domain awareness at the border. To maximize their information-gathering ability on traveler identity, CBP has begun employing three tactics for achieving this strategic objective: (1) document standardization, (2) document security, and (3) traveler registration and automated document capture.

The first two of these tactics have been pursued through the Western Hemisphere Travel Initiative (WHTI), which limits the number of documents a national or legal resident of a western hemisphere country can present for admission to a CBP officer at POEs. By standardizing these documents and mandating certain security and machine readable requirements, WHTI and supporting legislation ensure that information can be more easily captured at POEs, and that fraudulent documents, identity theft, and other misrepresentations to CBP officers are more difficult to undertake. The increased use of biometrics, as mandated by Congress, serves as an effort to create a “unique identity” for each traveler, thereby making identity misrepresentation at the border theoretically difficult. The U.S. Visitor and Immigrant Status Indicator Technology is used for automated capture of document information and registration and storage of visitor information. By using these tools, CBP eventually hopes to be able to capture the unique identity of all visitors arriving and departing the United States, to assess their threat level, and to track visa overstays and other violations of immigration law—all in real time.

One of the primary concerns voiced by opponents over implementing such a system has been the high thresholds for proving identity. Proponents believe that border officials’ efforts at reducing the possibility of *type II error* due to increased security concerns may have increased the

⁶³ The 9/11 Commission recommended the integration of the U.S. border security system by expanding the network of screening points to include the nation’s transportation system and access to vital facilities. The Administration responded to this recommendation by issuing Homeland Security Presidential Directive 11 (HSPD-11), which in large part builds upon HSPD-6, and related measures to improve terrorist screening. For more information, see CRS Report R40901, *Terrorism Information Sharing and the Nationwide Suspicious Activity Report Initiative: Background and Issues for Congress*, by Mark A. Randol and CRS Report R40602, *The Department of Homeland Security Intelligence Enterprise: Operational Overview and Oversight Challenges for Congress*, by Mark A. Randol.

possibility of a *type I error*⁶⁴ thereby resulting in preventing the attempted entry of individuals who should be allowed to cross the border. While the law safeguards U.S. citizens by explicitly stating that a U.S. citizen cannot be barred from entry, systemic errors and identity requirements could create potential hardships and unfair admission denials. DHS has to some extent attempted to deal with such concerns by creating the DHS Traveler Redress Inquiry Program (TRIP), where an individual can express grievance over treatment and admission denials. While concerns about such errors will be present in any system, the increased reliance on identity technology has fueled concerns over identity errors among some privacy advocates. (The evolving role of technology in border security is discussed separately in a subsequent section.)

Informational Systems

In practice, efficiency requirements at the border have meant that CBP and its sister agencies have become reliant on a network of databases to aid them in the admissions process and law enforcement tasks. One of the central information and identification systems in this regard is US-VISIT. In 1996, Congress required the Attorney General to create an automated entry and exit data system that would track the arrival and departure of foreign nationals—a program now known as US-VISIT. The objective for an automated entry and exit data system was, in part, to develop a mechanism that would be able to track nonimmigrants who overstayed their visas as part of a broader emphasis on immigration control. However, while the tracking of nonimmigrants who overstayed their visas remained an important goal of the system, border protection has become the paramount concern with respect to implementing the system.

US-VISIT is composed of numerous data systems, including the Automated Biometric Fingerprint Identification System (IDENT),⁶⁵ the Traveler Enforcement Compliance System (TECS II),⁶⁶ and information provided by foreign governments through information-sharing agreements.⁶⁷ Immigration inspectors have access to US-VISIT during primary inspections. These systems draw from enforcement databases, consular systems, and other sources to inform officers if an individual is a criminal, holds a valid visa, and other information relevant to the admissions process. Upon his or her arrival at designated ports of entry, DHS takes a digital photograph and 10 fingerprints from each nonimmigrant alien seeking entry to the United States. The biometric information collected is entered into IDENT. Nonimmigrant aliens' biometrics and biographical

⁶⁴ Type I and type II errors are types of incorrect conclusions from a statistical hypothesis test. A type I error is the incorrect conclusion of rejecting the assumed condition given that it is actually true. An example of such an error in a border context would be officials rejecting the entry of someone that is actually permitted to enter. Alternatively, a type II error is an incorrect conclusion of accepting the assumed condition given that it is actually false. An example of such an error in a border context would be officials permitting the entry of someone that is actually not permitted to enter.

⁶⁵ IDENT has been in use since 1994 and is used by USBP agents on aliens who are apprehended and other selected aliens. Immigration inspectors use IDENT during primary inspections and as a part of the US-VISIT program to check the admissibility of foreign nationals seeking entry to the United States. ICE agents also query IDENT when they come into contact with aliens. IDENT is composed of two databases: (1) a "lookout" database that contains fingerprints and photographs of aliens who have been previously deported or have a criminal history, and (2) a "recidivist" database that contains fingerprints and photographs of illegal aliens who have been apprehended by the border patrol. IDENT uses a biometric identifier (fingerprints and a photo) to obtain information on selected aliens seeking entry into the United States.

⁶⁶ TECS II is a customs system that was transferred to DHS from the Treasury Department. It currently operates as an information technology platform, and serves as the foundation for several enforcement systems and activities within DHS.

⁶⁷ U.S. Department of Homeland Security, National Protection & Programs Directorate, United States Visitor and Immigrant Status Indicator Technology, *Congressional Budget Justification: Fiscal Year 2011*, Washington, DC, February 2010, pp. US-VISIT-18.

information are compared against the information contained in IDENT. Moreover, information is sent to CBP's Automated Targeting System, and various matchlist screenings of information at the border are conducted by CBP's National Targeting Center, among others.⁶⁸

In addition to the US-VISIT system, there are a host of other systems used to assist in the task of border protection. Some of these systems provide additional information on the activities of certain individuals in the interior. For example, the Student and Exchange Visitor Information System (SEVIS) is used to track and monitor students, and exchange visitors and their dependents throughout the duration of approved participation within the U.S. education system.⁶⁹ In addition, the National Security Entry-Exit Registration System (NSEERS) subjects certain nonimmigrant aliens to special registration requirements.⁷⁰ Finally, under E-Verify, participating employers verify new hires' employment eligibility by accessing Social Security Administration (SSA) and, if applicable, DHS databases.

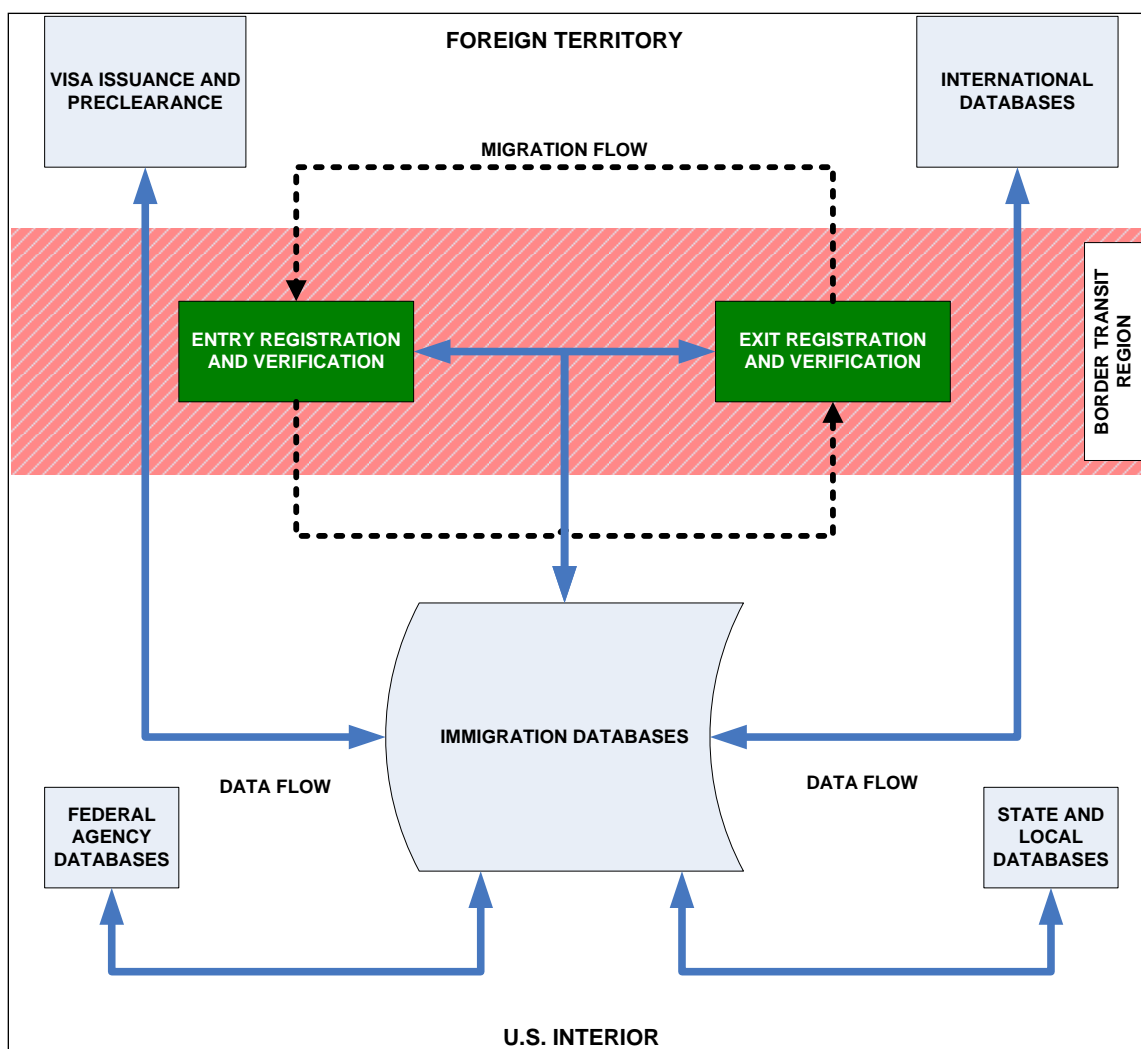
The purpose of these systems and others is not simply to provide protection at the border, but to enhance the deterrence function of border protection. Employment verification, if universally implemented, should theoretically reduce the demand for unauthorized workers, which over time would reduce the supply. Moreover, information sharing among agencies not only increases the probability of successful enforcement actions, but should also reduce the cost of investigations and obtaining intelligence. As **Figure 5** shows, by sharing the identity information and other intelligence, each component of the immigration and law enforcement systems becomes like a node in the intelligence network, feeding aggregated databases. In return, these aggregated databases provide information to help field officers and analysts make crucial decisions that enhance border protection. And the greater the amount of feedback flowing both ways between the aggregated systems and the field offices, the more informed (and therefore lower risk) each decision made by a border officer can be.

⁶⁸ For more information on terrorist travel and screening, see CRS Report RL33645, *Terrorist Watchlist Checks and Air Passenger Prescreening*, by William J. Krouse and Bart Elias.

⁶⁹ For more information, see CRS Report RL31146, *Foreign Students in the United States: Policies and Legislation*, by Chad C. Haddal.

⁷⁰ Registration is required for citizens or nationals of Iran, Iraq, Libya, Sudan, and Syria, as well as other nonimmigrants determined to pose an elevated national security risk.

Figure 5. Identity Information Flow and Management



Source: CRS analysis and presentation of administrative documents, such as Department of Homeland Security, United States Visitor and Immigrant Status Indicator Technology, FY2011 Congressional Budget Justifications, February 2010.

Because of the large amount of data requests that results from the large cross-border migration flows, the border agencies have developed certain tactics to alleviate some of the potential congestion that such border checks can produce. Specifically, CBP has established several registered traveler programs for eligible individuals. By voluntarily allowing oneself to be fingerprinted and subject to a background check, individuals in these programs are provided with expedited processing procedures (and usually head-of-the-line privileges). The reciprocal payoff for the border protection agencies is the added time to ensure that the applicant for the program indeed constitutes a low security risk and indeed fulfills all admissions criteria. Examples of such programs include, but are not limited to, the Secure Electronic Network for Travelers Rapid Inspection (SENTRI) along the Southwest border, NEXUS along the northern border, and the Global Entry program for U.S. and Dutch nationals.

The Evolving Role of Technology

As with service and enforcement enterprises, technology plays an important role for government agencies involved in securing and managing the border. Like other government agencies, the use of computers, networks, and digital records has created opportunities for increased efficiency. But unlike many other government functions, technological deployment along the border has begun moving from being a tactical measure toward becoming a strategic objective. Technology has become an increasingly common method of addressing vulnerabilities in systems—border protection or otherwise.

Technology serves as a fundamental element of force multiplication at the border. The deployment of appropriate technology can allow for the rapid detection, collection, organization, and dissemination of data, including those related to identity, threats, and the like. Properly employed, technology can enhance the ability of a trained officer or analyst to make correct security judgments about individuals and situations encountered at the border. For proponents, technology provides a solution to help with improved terrorist targeting and shoring up certain vulnerabilities.⁷¹ Additionally, certain technologies can be used to address key vulnerability of human error.⁷² Technology can provide not only a heightened detection capability—the ability to detect radiation, for example—but also an objectivity that can be manipulated with a field officer. Combined with its ability to make detections rapidly, technology is thus believed by some to provide a potential solution to several border protection dilemmas.

For critics, an over-reliance on technology can be misplaced.⁷³ In addition to the various shortcomings of some technological efforts (and the privacy concerns that some of these technologies have raised), critics note that there can be no substitute for the learning and intuition of an experienced field officer. DHS has recognized that any effective border protection efforts will likely provide an appropriate balance of manpower, technology, and infrastructure. Therefore, it publically states that it regards technology as a tool to achieve its goals. Yet, for critics, the pursuit of technology represents a costly resource investment that is more efficient as a symbol than it is in achieving the aim of more secure borders.⁷⁴

While some of the increased emphasis on technology comes from the perceived information that these products purport being able to deliver, an important element of its growth has been the large preexisting market surrounding military technology. Many producers of military technology have realized that technologies developed for defense applications can also be marketed to CBP and other law enforcement agencies as so-called “force multipliers.” Examples of such equipment include ground-based radar and unmanned aerial vehicles. Consequently, a growing industry of homeland security equipment producers has emerged, particularly following the September 11, 2001 terrorist attacks and the subsequent formation of DHS. There is little question that the technological tools are value-added to the agencies using them. Yet, a potential hazard for policymakers and border managers alike is to assume that such technology can serve as a substitute for more traditional approaches of border protection, such as human intelligence gathering and using immigration laws to create legal pathways for immigration and incentivize

⁷¹ For example, see U.S. General Accounting Office, *Technology Assessment: Using Biometrics for Border Security*, GAO-03-174, November 2002.

⁷² See footnote 71.

⁷³ Rey Koslowski, *Immigration Reforms and Border Security Technologies*, Social Science Research Council, article for the series “Border Battles: The U.S. Immigration Debates”, July 31, 2006, <http://borderbattles.ssrc.org/Koslowski/index.html>.

⁷⁴ Tom Barry, *Fallacies of High-Tech Fixes for Border Security*, Center for International Policy, International Policy Report, Washington, DC, April 2010.

authorized behavior. Thus, while technology serves as an important component of border protection, it comes with limitations and vulnerabilities. Some of these vulnerabilities and systemic challenges, as well as those of the broader framework, are discussed in the section below.

Systemic Challenges and Resulting Vulnerabilities

As with any set of policies that attempt to control human behavior, a shift in the border protection framework involves a certain set of trade-offs. By attempting to change patterns of behavior, new side effects may be introduced, or previously minor problems may become amplified. As with any framework, vulnerabilities do exist, and there are systemic challenges that may cause or exacerbate some vulnerabilities. Despite extensive planning, the introduction of new border policies may also introduce unforeseen activities that require monitoring and enforcement. As a result, border protection agencies will require some period of time to learn these tradeoffs and adjust to their circumstances. Over time, as agency learning accumulates and tactical responses are honed, some of these side effects should theoretically be reduced.

Some tradeoffs produce consequences that are indirectly related, or less adverse, to the border protection mission of the agencies involved; yet, others have a direct impact on the success or failure of such a mission. A number of these tradeoffs—both direct and indirect—can be thought of as vulnerabilities. Vulnerabilities constitute essentially those components of the border security framework that are prone to weakness or have the potential for exploitation by unlawful individuals. Moreover, these vulnerabilities can in some cases be caused by systemic challenges. Failure to adequately respond to such challenges can either cause or further amplify vulnerabilities in a strategic approach. For border officials, some of the major systemic challenges may be characterized as follow:

- **Corruption:** By using a funneling system toward ports of entry, DHS places a great amount of responsibility upon its inspection officers. Consequently, smugglers and other nefarious actors have attempted—sometimes successfully—to infiltrate CBP. Criminals and DHS alike are acutely aware that such corruption, when successful, renders most of the border security framework meaningless. Therefore, there have reportedly been extensive efforts by criminals to surreptitiously enroll CBP officers on their payrolls, particularly in the wake of drug supply chain interruptions by the ongoing Mexican drug-related violence and the tactical measures implemented by DHS. To counteract such efforts, DHS has ramped up its internal investigation efforts to root out any double agents. These internal enforcement efforts have been accompanied by increased professionalization measures, such as the addition of law enforcement retirement benefits for CBP officers, that incentivize employees to resist corruption.
- **Congestion and Time Pressures:** The concentration of inspection activity at the border means that significant resources must be present in order to ensure efficient operations. Inefficiencies not only cause congestion, but can be costly to businesses, both at the border and in the interior. Thus, there is considerable pressure on CBP to provide for rapid processing. Yet, expedited processing can lead to missed opportunities for interdicting threats. As a countermeasure to this vulnerability, CBP has promoted the use of registered traveler programs, although in some cases the lack of adequate port of entry infrastructure has prevented end users from reaping the promised benefits of such programs.

- **Limited Outbound Screen/Registration:** The absence of outbound information on inbound travelers reduces the ability of border protection officials to track individuals and limit their ability to track visa overstays. It also limits their ability to gather data that may be of added value for intelligence analysis.

Although some vulnerabilities will become evident over time, several potential weaknesses may be identified under the present border security framework. Some of these vulnerabilities may be in tension with other vulnerabilities or systemic weaknesses. Examples of such vulnerabilities are discussed below.

- **Circumvention of Protection:** As mentioned regarding layered security measures, the more one target is hardened, the greater the likelihood that law violators will shift their attention to a softer target and/or use different means. Moreover, as border protection increases, law violators tend to become more sophisticated in their methods for circumventing these measures (thereby making detection and interdiction more difficult). For the border region, this becomes especially salient, since frequently the goal of a border incursion is to reach a destination away from the border region. Thus, without a seamless interaction with interior enforcement agencies and law enforcement entities, the border serves as a metaphorical finish line, which once overcome serves as the final hurdle that is disconnected from the interior.
- **Fraud/Identity Misrepresentation:** While CBP has made significant efforts to standardize and secure identity documents, having documents that pass inspection still constitutes the lowest-risk/highest-yield method of border incursions for many law violators. Even with biometric identifiers at the border, if an individual is able to misrepresent himself or herself to the agency issuing documents, the layered security of border protection has essentially been circumvented.
- **Stakeholder Resentment:** While border protection officials serve the public with the best intentions, the tactics they employ in pursuit of border protection can foster resentment or ill will among community groups, state and local officials, and foreign entities. If such stakeholders perceive the tactical decisions as being in bad faith or in direct contradiction to their community's betterment, these groups can pull their support or even actively work in opposition to border protection efforts. Tactics viewed as illegitimate or detrimental by stakeholders could undermine significant elements of the protection framework. For example, if the use of information provided by foreign governments was perceived as being misused by CBP, those governments could cease to provide such information. Thus, stakeholder relations are crucial to mitigate this vulnerability.

For policymakers and for the public at large, the fundamental questions these vulnerabilities raise are: what vulnerabilities are unacceptable, and to what extent must each vulnerability be overcome? Depending on one's views on border protection, the answer may vary considerably. But it is important to also assess how well the current border protection approach is doing in addressing these vulnerabilities and securing the border. An analysis of the current framework's effectiveness is provided in the following section.

Are the Border Policies Working?

As previously discussed, the current border protection framework can be summarized as securing and managing the U.S. border through obtaining effective control of the borders, safeguarding lawful trade and travel, and identifying and disrupting transnational criminal organizations. The five strategic commonalities to achieve these goals consist of the DHS leadership, deployment of layered security, maximizing domain awareness, promotion of a shared agency culture, and expansion of the border through international and domestic partnerships. This section will examine the extent to which some of these policies are working and goals are being achieved, with a particular emphasis on the effective control of the border.

The border protection framework has come under study of several scholars and researchers regarding its effectiveness. Many of these studies have been critical—particularly in regard to immigration control. For some academics, their criticism is based on what is sometimes referred to as a “gap hypothesis,” wherein “[a] significant and persistent gap exists between official immigration policies and actual policy outcomes.”⁷⁵ These gaps take two forms, according to academics: gaps caused by the unintended consequences of policy, and gaps caused by inadequate implementation or enforcement of policy.⁷⁶ Although scholars and non-scholars alike tend to agree on the existence of this gap in relation to border policies, scholars tend to attribute the cause of the gap more toward the unintended consequences of such policies, while many supporters of such policies suggest the fault lies in the implementation or enforcement. Some scholars, such as Peter Andreas, have previously issued strong, negative conclusions on the border framework’s effectiveness, particularly in regards to stemming the flow of unauthorized immigration. And for a number of observers, one of his main conclusions of a decade ago still holds true:

Even though the border enforcement effort has failed to substantially reduce the flow of [unauthorized] migrants and has had the side effect of making organized migrant smuggling a much more profitable business, it has succeeded in making illegal border crossings less visible and more dispersed—and thus in projecting an image of a more secure and orderly border.⁷⁷

In spite of some of the strong conclusions ringing from academic circles on the ineffectiveness of the current border protection approach, analysis of open source data seems more ambiguous regarding notions of success or failure. Evidence both supporting and refuting the effectiveness of the border framework has emerged, painting an often ambiguous picture. The sections below delve further into some of the more prominent pieces of data to illustrate this ambiguity by analyzing some of the available empirical evidence on unauthorized migration and related enforcement efforts. If the border protection framework does indeed serve as a unified approach for combating terrorism, criminal smuggling, and illegal immigration, analyzing data on illegal migration can be used to determine the effectiveness of the border protection framework in at least one of its primary areas of concern.

Supporting Trends

Since the 9/11 attacks, a large amount of resources has been devoted to providing for homeland security, especially in efforts to shore up border protection. Appropriations from Congress to CBP

⁷⁵ Wayne A. Cornelius and Takeyuki Tsuda, “Controlling Immigration: The Limits of Government Intervention,” in *Controlling Immigration: A Global Perspective*, ed. Wayne A. Cornelius, Takeyuki Tsuda, Philip L. Martin, and James F. Hollifield, 2nd ed. (Stanford, CA: Stanford University Press, 2004), p. 4.

⁷⁶ See footnote 75, p. 5.

⁷⁷ Peter Andreas, *Border Games: Policing the U.S.-Mexico Divide* (Ithaca, NY: Cornell University Press, 2000), p. 14.

alone have more than doubled, from under \$5 billion in FY2004 to over \$10 billion in FY2010 (see **Table B-1**). In addition, other agencies with border protection support functions have received large funding increases. ICE, for example, experienced a threefold increase in appropriations between FY2004 and FY2009. As such, law enforcement efforts at the border and in support of the border have been ramped up significantly.

Resources

The impact of some of this resource dedication is notable in **Table 2**. The increases in the number of funded detention beds, the growth in the number of border patrol agents, and the miles of fencing and barriers constructed by CBP serve as direct results of the increased funding to border protection efforts. From FY2000 to FY2009, USBP more than doubled the number of agents, and the mileage of fencing and barriers increased by roughly tenfold.

Table 2. Select Border Security-Related Statistics, FY2000-FY2009

Fiscal Year	Average Daily Detention Population	Number of Funded Detention Beds ^a	Border Patrol Agents	Apprehensions ^b	Combined Fencing and Barrier Mileage ^c	Aliens Removed
2000	N/A	N/A	9,212	1,814,729	66.9	188,467
2001	20,251	19,702	9,821	1,387,486	72.7	189,026
2002	19,922	21,109	10,045	1,062,270	81.2	165,168
2003	21,178	19,444	10,717	1,046,422	81.2	211,068
2004	21,928	19,444	10,819	1,264,232	87.2	240,665
2005	19,718	18,500	11,264	1,291,142	119.4	246,431
2006	22,975	20,800	12,349	1,206,457	139.4	280,974
2007	30,295	27,500	14,923	960,756	264.2	319,382
2008	31,771	32,000	17,499	791,568	357.4	358,886
2009	32,098 ^d	33,400	20,119	556,041 ^e	636.5	N/A

Source: Department of Homeland Security, Office of Immigration Statistics, *Yearbook of Immigration Statistics, FY2008*, as well as inquiries to ICE Office of Congressional Relations and CBP Office of Congressional Relations.

Notes: All statistics are for end of fiscal year.

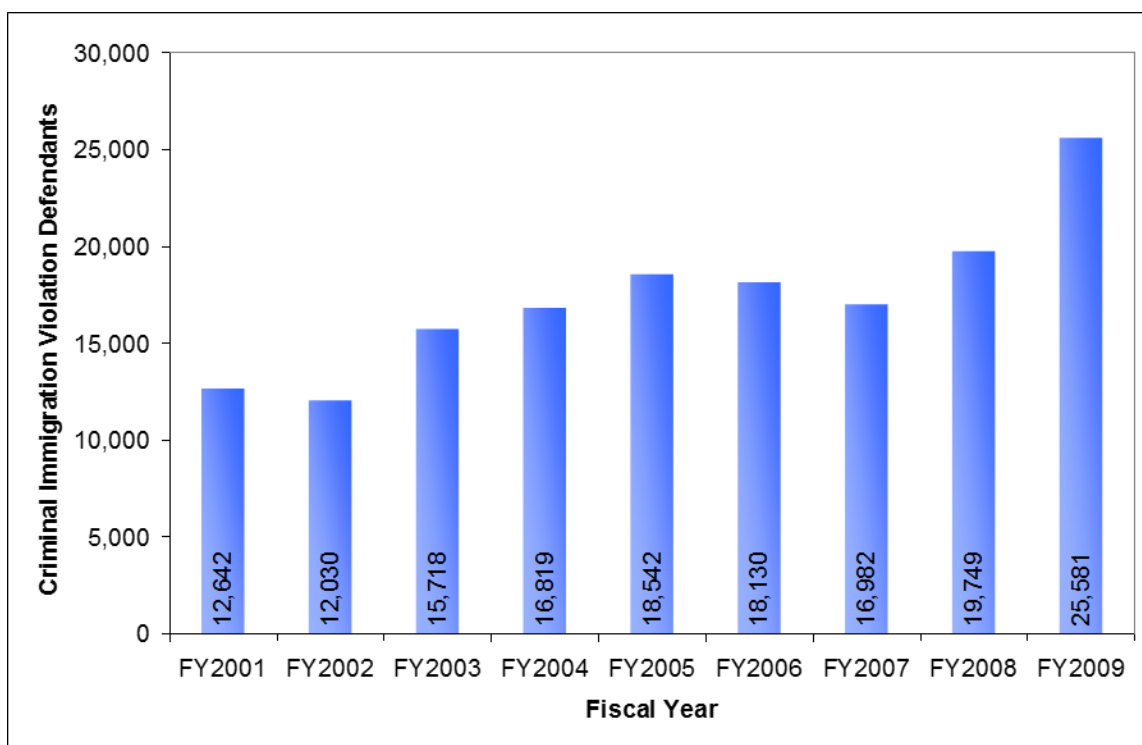
- Through “as needed” contracts and interagency agreements, ICE reimburses other agencies, state and local governments, and private facilities for use of their detention bed space.
- These figures include apprehensions by USBP along the entire United States border, as well as apprehensions by ICE Investigations and arrests of fugitive and nonfugitive aliens under the Office of Detention and Removal Operations (DRO) National Fugitives Operations Program.
- The numbers presented in this column include the combined total mileage of pedestrian fencing and vehicle barriers. The mileage for FY2000-FY2004 are CBP estimates.
- Figure for FY2009 includes ICE, The Department of Health and Human Services’ Office of Refugee Resettlement (ORR), and Bureau of Prison (BOP) populations. Data prior to FY2009 are ICE only.
- The total number of apprehensions for FY2009 only includes the number of apprehensions by the Border Patrol. Apprehensions by ICE are not included because they are not yet available. Thus, the actual number of apprehensions is likely to be higher.

Increased resource deployments such as those depicted in **Table 2** should logically result in increased numbers of enforcement activities—activities that should serve as deterrents against

unlawful border incursions. To support the border protection function, the ramped up interior enforcement action of detaining and removing aliens seemingly bear out expectations. With increased interior immigration enforcement, the logical expectation in the short term would be an increase in the detention population along with an increase of removals. Both of these expectations have been borne out, as the upward trend in the past decade has been seen in both average daily alien ICE detention population (up 58%) and the number of aliens (up 90%). In addition, the tactical infrastructure erected in recent years should theoretically have the effect of diverting traffic to ports of entry, because such force multiplying measures should yield greater operational control between ports of entry. CRS analysis of the apprehension rates in the San Diego sector after the erection of the San Diego fence in 1994 showed that this barrier had at least a diversionary effect on illegal entries by pushing most unlawful crossings to areas without fencing.⁷⁸

In order to support the deterrence effects of tactical infrastructure and increased manpower, CBP has chosen to prosecute all eligible individuals in certain border sectors under illegal entry provisions of the INA—an initiative called Operation Streamline. Operation Streamline began in 2005 and represents a “zero tolerance” policy of border incursions. As **Figure 6** shows, this focus on immigration violation has resulted in a 38% increase in criminal immigration violation defendants in cases commenced in U.S. District Court from FY2005 to FY2009. In addition, such defendants increased by 102% between FY2001 and FY2009.

Figure 6. Number of Defendants in U.S. District Court Criminal Immigration Violation Cases Commenced, FY2001-FY2009



Source: Administrative Office of the United States Courts, *Federal Judicial Caseload Statistics*, Washington, DC, March 31, 2009.

⁷⁸ CRS Report RL33659, *Border Security: Barriers Along the U.S. International Border*, by Chad C. Haddal, Yule Kim, and Michael John Garcia.

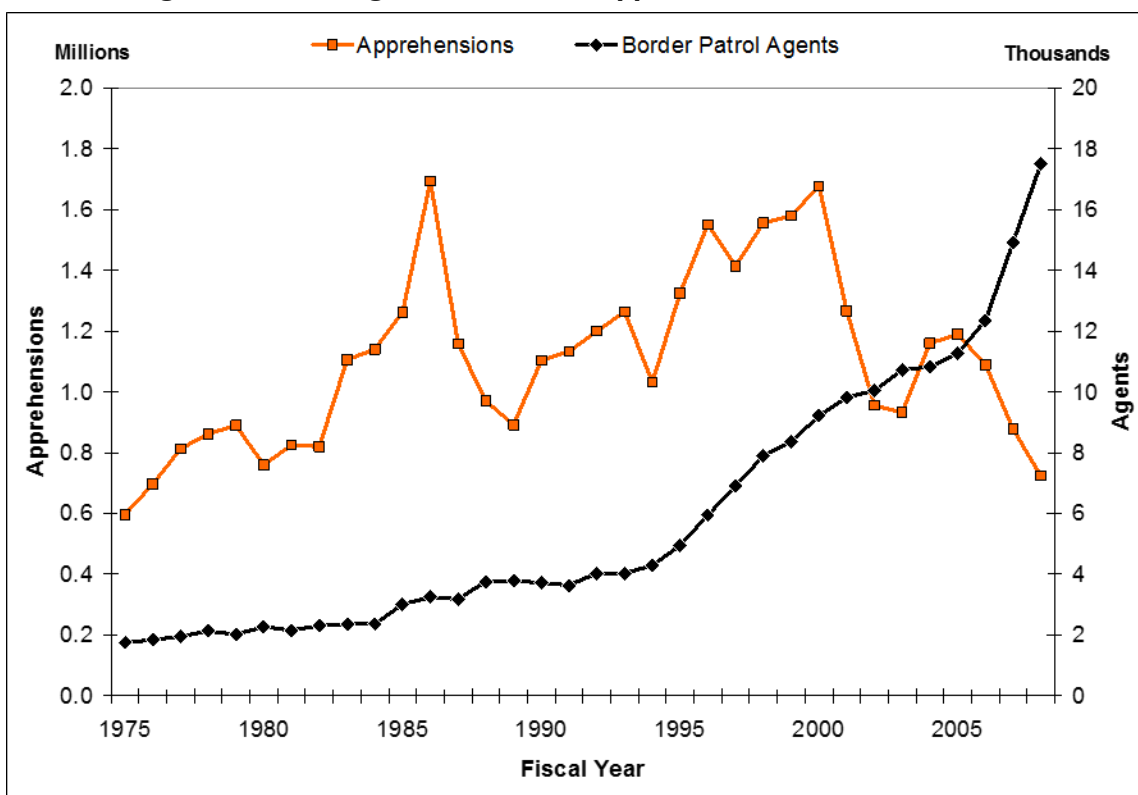
Notes: The figure includes defendants who are apprehended at the border and in the interior. Most violators of immigration law are civil violators and therefore subject to civil removal procedures under the authority of the Executive Office for Immigration Review. Other violators are eligible for expedited removal and removed within 72 hours of being detained, and are therefore not placed in removal proceedings. Immigration violations are classified as alien smuggling, improper entry by an alien, improper re-entry by an alien, fraud and misuse of visa/permit, and other immigration violations.

Apprehensions

In general, the increased deployment of resources toward border protection should theoretically produce a deterrence effect on terrorists, criminals, and other border violators. Apprehensions have long been used as a performance measure by USBP. When combining the resource growth with the deterrence-producing framework, the expectation is that it would result in fewer apprehensions. In conjunction with the increased amount of resources going toward border protection that began in 2001, the number of USBP apprehensions has decreased significantly. Moreover, this reduction has held an inverse relationship to the number of Border Patrol agents (as shown in **Figure 7**), which more than doubled from 9,821 agents in FY2001 to 20,119 agents in FY2009. Critics note that the USBP also doubled the number of agents between FY1995 and FY2000 without any downward impact on the apprehension rate others might suggest that at a certain number of agents available, a tipping point was reached whereby the USBP had sufficient manpower to effectively intercept border violators and provide deterrence. Moreover, force multipliers such as tactical infrastructure and technology might have increased apprehension abilities and by extension the deterrence effect.⁷⁹

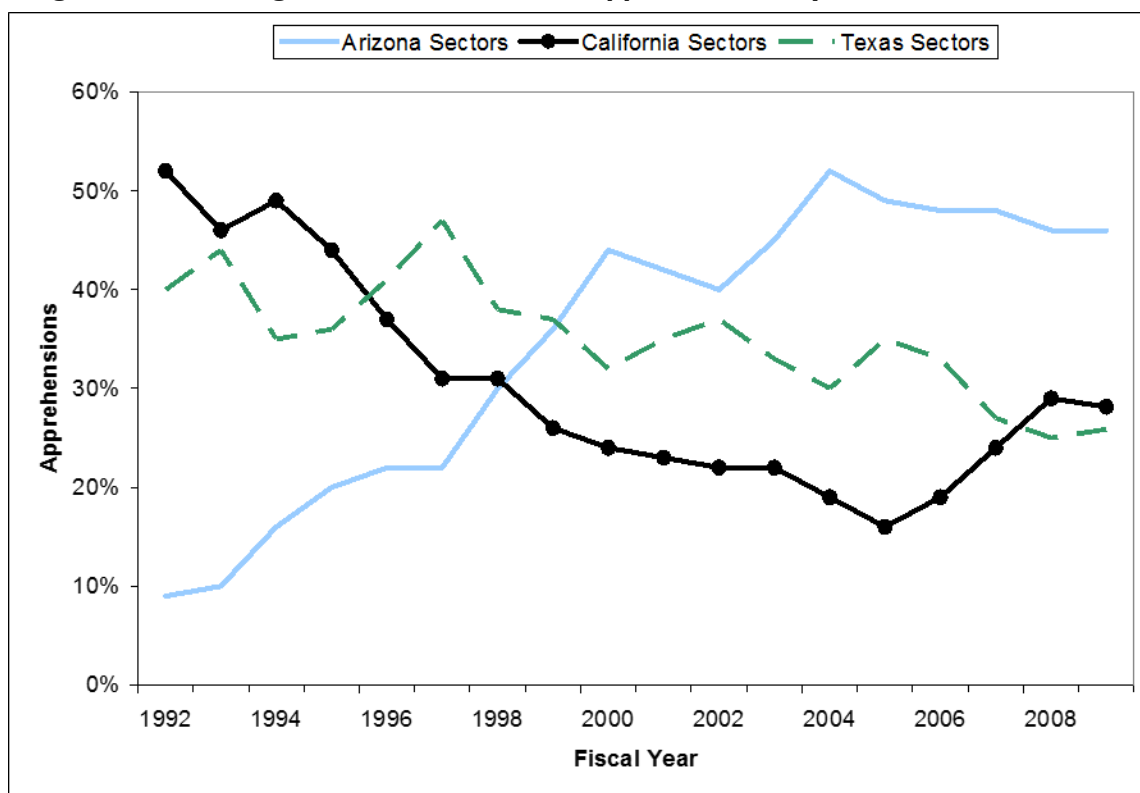
⁷⁹ The correlation of apprehensions and border agents depicted in **Figure 7**, which in the past decade demonstrated the inverse relationship supporters expect, was statistically strong after FY2000. For the FY2001-FY2009 period, this correlation was -0.89. For the entire time period depicted in **Figure 7**, however, the correlation was 0.13, meaning that statistically there was almost no relationship.

Figure 7. USBP Agents and USBP Apprehensions, FY1975-FY2009



Source: CRS presentation of CBP data.

Additional analysis of apprehensions in Southwest border sectors reveals that the USBP “Prevention Through Deterrence” operational approach has apparently accomplished its goal of rerouting unauthorized aliens away from urban areas and toward more remote areas of the Southwest border, making the journey more difficult for aliens and thereby affording the Border Patrol with more time to make the apprehension. One way to conceptualize this flow is to look at total apprehensions by state. **Figure 8** shows the changing patterns of unauthorized migration along the Southwest border. In the early 1990s, California and Texas accounted for over 90% of all apprehensions made. As USBP implemented “Prevention Through Deterrence,” including constructing the border fence in San Diego and deploying agents directly along the border in more populated areas, apprehensions in California began decreasing steadily while apprehensions in Arizona began increasing steadily. Even though overall apprehensions have declined over the past four years, Arizona’s percentage of the total has remained stable, right around 48%. Interestingly, the pattern of unauthorized migration appears to be shifting back to California to some extent. As previously mentioned, this suggests that as the Arizona border crossing has become increasingly hardened through the deployment of agents and infrastructure, unauthorized migrants are probing other parts of the border in an effort to find easier crossing routes. This appears to have been the central theme of unauthorized migration over the past two decades: aliens are continually trying to find the least difficult entry point into the United States, and as enforcement efforts harden one part of the border, the flow of unauthorized migration shifts to other sectors.

Figure 8. Percentage of Southern Border Apprehensions by State, FY1992-FY2009

Source: CRS presentation of CBP data.

Violence in Mexico

Another piece of evidence that supporters of current strategic border efforts cite as evidence of success is the drug-related violence in Mexico. It is widely perceived that drug trafficking organizations are finding it more difficult and more costly to control the production zones and smuggling routes. One of the consequences of this increasingly competitive environment is a rise in the level of violence associated with the illicit drug trade, as the drug trafficking organizations struggle for control over territory, markets, and smuggling routes. Although not confirmed by currently available research, DHS officials have speculated that part of the violence that has erupted between Mexican drug trafficking organizations can be attributed in part to DHS border protection policies.⁸⁰ These officials believe that the efforts to funnel smuggling and trafficking activities toward ports of entry have disrupted a number of the previous supply channels for such operations, thereby limiting the ability to conduct illegal cross-border activities.

These speculations are to some degree supported by media reports that Mexican smugglers and traffickers have become more aggressive in their attempted efforts at corrupting CBP officers.⁸¹ Such factors, along with SBI and the large numbers of new hires being brought in as CBP officers have placed an increased pressure on the Southwest border points of entry. While the deployment of the physical barriers are planned for roughly 670 miles of the Southwest border, the eventual

⁸⁰ For discussion, see CRS Report R41075, *Southwest Border Violence: Issues in Identifying and Measuring Spillover Violence*, coordinated by Jennifer E. Lake and Kristin M. Finklea.

⁸¹ See footnote 80.

deployment of the virtual fence is intended to occur along the entire United States border, thereby theoretically tightening supply corridors even further.

Opposing Evidence

In contrast to the narrative that supporters of the border protection framework have presented with statistical support, critics and opponents have drawn upon additional empirical evidence in an effort to debunk the asserted effectiveness of the border protection framework. Specifically, critics attempt to rebuke the claimed relationship between enforcement efforts and unauthorized migration. These critics argue that enforcement efforts tend to divert the flows and change the means of migration, as opposed to actually generating a deterrence.⁸² The basis for such claims is that critics contend that the incentives for unauthorized migration are most strongly rooted in the market system.⁸³ As the argument goes, unauthorized migrants are driven by forces of supply and demand. And while enforcement efforts represent transaction costs for intending (or existing) unauthorized migrants, the relatively higher wages and employment that can be obtained in the United States overrides the deterrence efforts of border enforcement officials. Interior efforts, such as attrition through enforcement, are also doubted by critics, because they believe these efforts will only wind up fueling the black market for unauthorized labor. For a number of these border protection framework opponents, deterrence is an ineffective approach to obtaining compliance with the law, and the efforts of border security officials are ultimately more harmful than helpful to legal commerce.

To substantiate their claims, critics of increased border enforcement measures have generally drawn upon data from the broader economy to contextualize enforcement statistics. **Figure 9** shows how the movement in border apprehensions relates to the movement in labor demand for the two economic sectors that have historically hired the largest number of unauthorized immigrants: (1) construction and (2) accommodation and food services.⁸⁴ The chart depicts the changes in apprehension and labor demand as year over year percentages in order to place them on a comparable scale. Generally, the patterns of the two data mirror one another, with each showing growth and decline when the other one does. In causal terms, the direct relationship that exists between these two variables generally conforms to the critics' expectation that apprehensions are driven by labor demand. In addition, the correlation between these two variables is statistically strong.⁸⁵

⁸² Wayne A. Cornelius, Impacts of Border Enforcement on Unauthorized Mexican Migration to the United States, Social Science Research Council, article for the series "Border Battles: The U.S. Immigration Debates", September 26, 2006, online at <http://borderbattles.ssrc.org/Cornelius/>.

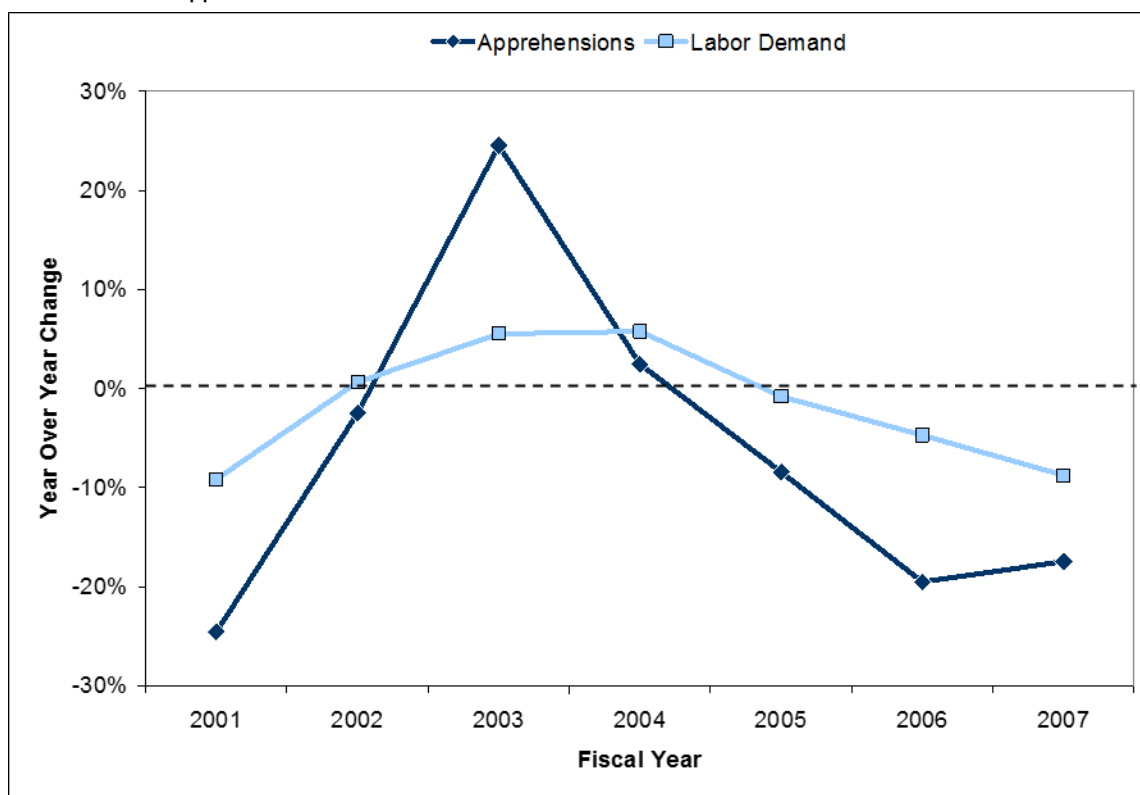
⁸³ See footnote 82.

⁸⁴ See CRS Report R41207, *Unauthorized Aliens in the United States*, by Andorra Bruno.

⁸⁵ The correlation between changes in labor demand and border apprehensions was 0.89. The correlation between apprehensions and Border Patrol Agents in **Figure 6** for the same time period as in **Figure 8** was -0.51.

Figure 9. Changes in Apprehensions and Labor Demand in Select Industries, FY2001-FY2007

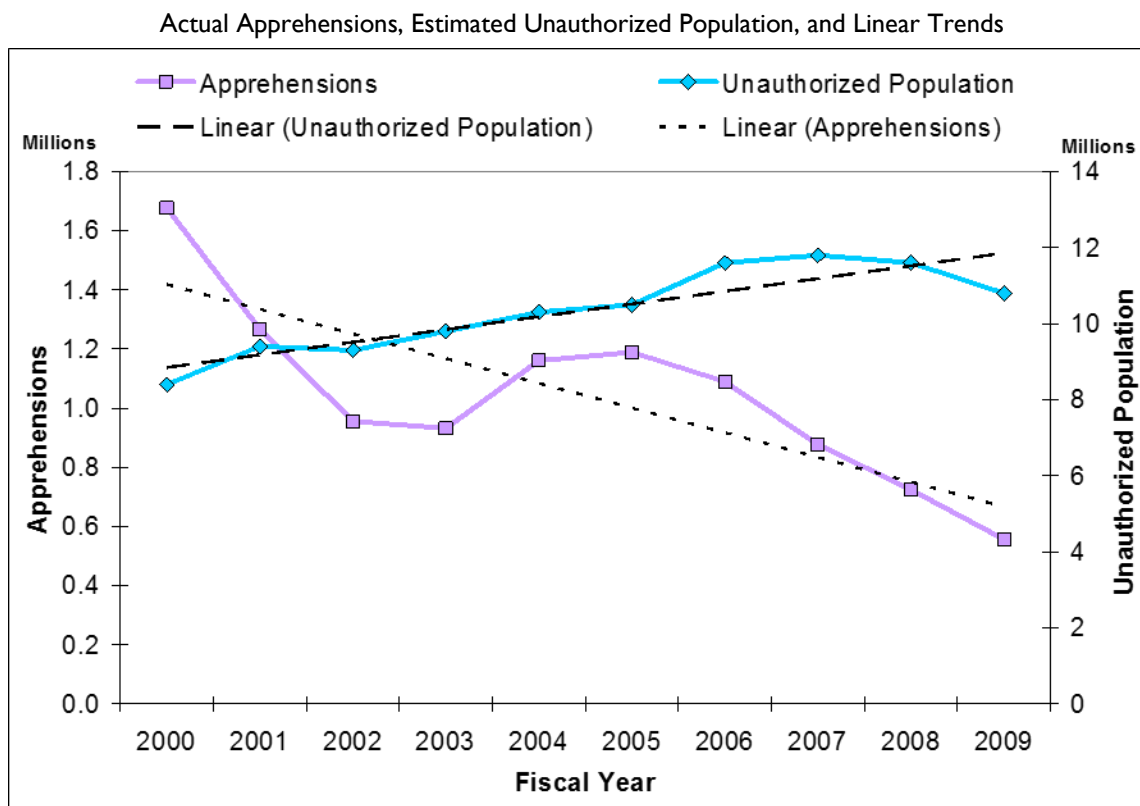
USBP Apprehensions and Hires in Construction and Accommodation and Food Services



Source: CRS presentation of CBP data, as well as data from the U.S. Bureau of Labor Statistics' (BLS) Job Openings and Labor Turnover Survey (JOLTS), 2008.

While such data can be countered to some extent by supporters with depictions such as those in **Figure 7**, another criticism of the border framework's effectiveness comes by analyzing the relationship of unauthorized immigration to apprehensions. Apprehensions with increased border resources is often assumed to be a proxy for effective deterrence, with decreasing apprehensions translating to increased deterrence. Yet, as **Figure 10** shows, despite the declining trend in apprehensions at the border, the trend of the estimated unauthorized population has been positive. Thus, since FY2000 there has been an inverse relationship between these two indicators. This information could therefore indicate that more individuals are entering legally and overstaying their visas, surreptitious border crossers are finding means of crossing that are eluding border officials, or both. Regardless, some would argue that if the current framework was working, either the apprehensions and unauthorized population should be declining in harmony or the unauthorized population should be decreasing as apprehensions decrease. Instead, the data seemingly indicate that the size of the unauthorized population is operating independently from border apprehensions.

Figure 10. Border Patrol Apprehension and Unauthorized Population Trends, FY2000-FY2009



Source: CRS presentation of CBP data, as well as data presented in CRS Report RL33874, *Unauthorized Aliens Residing in the United States: Estimates Since 1986*, by Ruth Ellen Wasem.

There are no reliable estimates for how many aliens successfully evade capture and enter the country. Most estimates cited calculate the growth in the unauthorized migrant population in the United States; as such, they cannot take into account the number of unauthorized migrants who enter the country, stay temporarily, and then leave. Most estimates of the unauthorized population derive from the Current Population Survey, which does not ask about legal status but does ask whether someone is a citizen.⁸⁶ Since unauthorized immigrants often enter and leave the country many times, **Figure 10** probably understates the number of people successfully entering the country each year. Lastly, despite some scholarly estimates, there is no way of knowing what percentage of the people here illegally entered the country surreptitiously, and what percentage entered through a port of entry but then overstayed their visa.

Empirical Conclusions

Analysis of available data suggests that despite some support for the viability of the current border protection approach it is not seemingly providing sufficient deterrence to overcome labor market demand for illegal workers. This conclusion, however, must be qualified. First, the present border protection operation is an incomplete version of what policymakers envisioned in their development of the homeland security apparatus. Although it is likely that a full implementation

⁸⁶ These estimates use a residual methodology to estimate the population (i.e., the estimated population after U.S. citizens and authorized aliens are accounted for).

of all intended components (e.g., biometric exit capability) would improve the deterrence factor, the degree of increased effectiveness it would create remains unknown. Moreover, the extent to which any border protection system would ultimately affect labor market demand is unclear, because artificial market barriers tend to produce latent demands that are satisfied with black market solutions.

The second qualification is that analyzing deterrence efforts is a game of counterfactuals: what would have happened without the actions that were taken? These types of questions often rest on assumptions that certain trends would have continued, and they can never be answered with absolute certainty in a human behavior environment. In regard to terrorism, it is unclear whether the current framework has actually resulted in an increase in the interception and/or prevention of more terrorist entries. For example, despite the increase in immigration prosecutions under Operation Streamline, the effect of border protection efforts on terrorism prosecutions is not statistically significant.⁸⁷ However, given the relatively small number of terrorists believed to be operating in the United States, it is difficult to discern what the terrorism prosecution statistics actually indicate about the border protection framework. Critics may question whether terrorism operates on a time cycle unknown to analysts, or whether the focus of terror elsewhere is unrelated to domestic efforts in the United States. For proponents of the current border protection policies, the fact that the United States has not experienced a large-scale terrorist attack since 9/11 serves as an indicator that the measures that have been taken have made terrorist efforts more difficult.

The third qualification speaks to the validity of some of the metrics involved in measuring border protection performance. As an example, one can look at the apprehension data. USBP data are limited by their focus on events (i.e., apprehensions) rather than people; thus if one unauthorized migrant is caught trying to enter the country three times in one year, he would count as three apprehensions in the data set. USBP has not released any data concerning how many unauthorized aliens are apprehended multiple times each year. This could mean that apprehensions statistics overstate the actual number of people trying to cross the border. Moreover, it is impossible to gauge, solely from apprehensions data, whether increases or decreases in apprehensions are due to unauthorized migration patterns or border enforcement policies. An increase in apprehensions could be due to an increase in the number of unauthorized migrants attempting to enter the country. The same increase could also be due to increased patrolling of the border, as additional agents make more arrests. Or it could be due to both an increase in the number of people attempting to illegally enter the country and increased patrolling. Lastly, it could be due to neither, and merely be a statistical anomaly. Yet, apprehensions nevertheless represent the best information available concerning the number of people attempting to enter the country illegally.

What Can Be Done?

The inconclusive results of studies on the effectiveness of current policies to control cross-border flows suggest that at least a partial reconceptualization of goals and strategies might be necessary. Perhaps central to any such evaluation would be a reexamination of the border's interconnected role relative to other systems, such as markets and immigration. Addressing immigration control in a broader context could represent a significant element of threat reduction. While immigration incursions only constitute a "border control" element of the threat spectrum, many observers

⁸⁷ From FY2001 to FY2009, a total of 322 terrorism cases were commenced, with a high of 63 cases in FY2006 and a low of 12 cases in FY2005. These statistics do not include individuals detained as "enemy combatants" and otherwise tried through military tribunals.

would argue that it represents the most constant source of border incursions. Achieving a greater level of immigration control at the border by addressing the underlying incentives for such migration could conceivably free up additional resources to combat other border threats. This section presents certain policy options for potentially improving border protection efforts in the short run, as well as introducing long-term considerations for policymakers, with a special emphasis on addressing unauthorized immigration.

Short-Term Options for Border Protection

While certain long-term border changes may require revisiting statutes and applying comprehensive changes in law, smaller changes could be implemented that would likely relieve some of the pressures on the border. Generally, these measures deal with ports of entry and improved capacity for dealing with the flows of individuals entering and exiting the United States. Border areas between POEs are not considered, in large part, because many of the measures to effect the funneling of migrants toward POEs have already been funded or constructed, and other portions of the border are reinforced against traffic by natural barriers. Some possible measures would likely effect reduced strain and/or provide increased operational control at the border:

- **Specific Ports of Entry for Trusted Travelers:** Currently, despite the existence of separate lanes at many POEs for registered participants in trusted traveler programs, traffic congestion frequently prevents these travelers from accessing these lanes readily to take full advantage of the potential benefits of participation. Constructing separate POEs for trusted travelers would expedite the crossing of such individuals and might incentivize more individuals to register in these programs.
- **Increased Resource Deployment:** For some policymakers, an increase in resource deployment to create an increased presence along the United States border would increase operational control of the border. Options for such deployment could include an increased amount of manpower, infrastructure, and new technologies.
- **Visa Checks Done Abroad:** Currently, visa checks for individuals flying to the United States are done at the U.S. border. Airlines check passports for visas overseas, but they do not have access to electronic visa records and cannot see if a visa has been pulled. The bombing attempt of Northwest Flight 253 allegedly by Umar Farouk Abdulmutallab on December 25, 2009, demonstrates that the border protection mechanism for checking visas remains vulnerable. An individual who has had his or her visa pulled, but who has not yet been deemed sufficiently threatening for the “No-Fly” list, has the ability to board a plane. Thus, an electronic confirmation of visa status could improve security efforts for air traffic to the United States.
- **Matching Security Standards in Foreign Countries:** An additional border vulnerability revealed by the Flight 253 bombing attempt was the lack of matching security standards by the United States and other countries. Since CBP does not have jurisdiction in other countries, CBP relies on memoranda of understanding (MOUs) to achieve similarly strict security standards abroad and depends on foreign officials to enforce these standards. CBP continues to work

toward such agreements, such as with DHS Secretary Napolitano's efforts at regional agreements for aviation security.⁸⁸

- **National Guard Deployment:** Some advocates of strengthening border protection have called for the temporary deployment of the National Guard to the Southwest Border.⁸⁹ While such a deployment would add more manpower along the border, the utility of such a deployment would depend in part on what authority such troops were deployed under. Due to limitations put in place by the Posse Comitatus Act,⁹⁰ some authorized deployments of the National Guard could restrict the ability of these troops to serve in a law enforcement capacity.⁹¹ Moreover, National Guardsmen would not have undergone the same level of training in immigration law as a USBP Agent or CBP Officer. Thus, the National Guard would potentially be of limited utility. Proponents of such measures, however, have generally stated that such a deployment would generally serve as a stopgap until additional law enforcement personnel could serve as replacements.⁹²

Long-Term Options for Border Protection⁹³

Although changes can be made to increase the short-term effectiveness of the current border protection policies, in the long-term policymakers face a number of factors to make the border protection framework sustainable. These factors involve a more holistic approach to the question of border protection that embraces the paradigm of a complex organism with overlapping systems. The current framework serves as a panacea for confronting numerous types of threats; however, confronting these threats at the border might not address the causal factors underlying them. Legislating policies that effectively address these underlying drivers may be a holistic way of addressing border protection. The discussion below provides a number of policy options that complement the current border protection policies on the one hand, and provides a holistic border protection approach on the other.

A Holistic Approach to the Border

Taking a more comprehensive look at the interconnected systems operating both at and in conjunction with the border could reduce operational stress on the border control agencies. Adopting this approach, however, does not mean that the elements of the border protection framework would be abandoned; in fact, most of the components would likely serve as complements to a new strategy. Rather, this holistic approach would involve modifying some of the tactics employed and addressing the policies in systems that overlap the border protection mechanisms. The foundation of such an approach (which can be subdivided in a number of

⁸⁸ See footnote 55.

⁸⁹ See footnote 24.

⁹⁰ 18 U.S.C. § 1385.

⁹¹ For more information on National Guard authorities and the Posse Comitatus Act, see CRS Report RS22443, *Border Security and Military Support: Legal Authorizations and Restrictions*, by Stephen R. Vina.

⁹² See footnote 24.

⁹³ As discussed earlier, a significant caveat in any discussion for altering the current border protection framework is that the present framework has not been fully implemented. As essential elements of this framework, developers of the current framework have called for tracking all entries and exits to the United States, more temporary worker programs, access to cross-agency real-time data by immigration officials, and for verification of employment and benefit eligibility of all aliens. The implementation of these provisions has been limited. However, broader questions continue to be asked about the eventual effectiveness of a geo-focused approach.

different ways) can be broken down to four distinct elements: (1) incentivizing legal avenues of behavior, (2) improving border capacity, (3) reducing the foreign supply of potential border violators, and (4) reducing domestic demand for unlawful incursions. While it is unclear whether addressing only one or some of these elements would be sufficient to achieve operational control and reduced border stress, many analysts agree that most of these factors are necessary to achieve these goals.

Incentivize “Good Behavior”

In general, the most cost-effective method of preventing undesirable behavior by any group is to provide proper incentives for an alternative, desired behavior. These incentives, however, must provide an outcome that serves as an acceptable substitute for the group; otherwise, the incentives are ineffectual. Once appropriate incentives for desired behaviors are identified, they can be applied to the targeted group, as well as to groups that they interact with (e.g., incentivize intending migrants as well as CBP officers). In addition, operations and process transparency tend to promote desirable behavior, as any undesirable behavior would be exposed—both within the general population and within the enforcement agency. Thus, improved transparency mechanisms and feedback loops complement any incentivized process structure for border interactions.

For congressional policymakers, incentivizing good behavior could mean providing legislative rewards for such behavior. It could also mean developing additional feedback mechanisms to identify when undesirable behavior is occurring. A number of these options would lie outside the functional scope of the agencies directly charged with border protection (and would thus be the responsibility of other agencies), but would directly affect the protection of the border. Some potential options for incentive modification and feedback mechanisms are bulleted below.

- **Create New or Expand Existing Legal Immigration Pathways:** While some immigration-related border incursions are related to criminal intentions (or possibly terrorism), many are based on seeking economic opportunity and reuniting with family members. While DHS is attempting to establish a disincentive for such behavior through the attrition policy discussed earlier, providing additional, affordable legal pathways for such individuals would offer an incentive to obtain a visa for entry. In return, border officials would obtain added information on entries and could potentially reduce their use of resources. Such legal pathways could be temporary or permanent in nature.
- **Employ Circular Migration Principles:** The incentive structure for visa compliance relating to overstays could be improved by employing circular migration principles—an approach whereby a visa holder who is otherwise in compliance with the law is guaranteed re-entry to the United States. This basic principle underlies the freedom of movement within the European Union, and studies have shown that in such cases economically based migration results in higher return migration rates.⁹⁴
- **Boost Community Relations:** An effectively implemented border protection strategy should include the involvement of all relevant stakeholders. Numerous community groups feel disenfranchised from decisions about the border and that

⁹⁴ For example, a *New York Times* article illustrated how many Polish carpenters would depart Poland for stretches of many months to countries such as Spain and Ireland. But because their ability to return to those labor markets was guaranteed under the European Union, these carpenters would return to their communities in Poland rather than permanently resettle (Carter Dougherty, “Strong Economy and Labor Shortages Are Luring Polish Immigrants Back Home,” *The New York Times*, June 26, 2008).

there is a lack of transparency. More active efforts to engage these groups would likely yield better community relations, as well as added community involvement in enforcement efforts. Moreover, instituting an ombudsman's office in both CBP and ICE to promote the community voices and mediate disputes between these agencies and the local community could assist relations and offer feedback to these agencies that could improve their management efforts.

- **Promote Law-Enforcement Model and Integrate Professionalism as Promotion Criteria:** Border officials have learned and to some extent incorporated the professional model of their counterparts in the Armed Forces. In some regards this development can be useful for law enforcement missions, such as in developing the disciplined capacity to interact with hostile threats. But in other respects, it can have a distancing effect between border officials and some groups of the border region, as they can be perceived separate from, as opposed to an integral part of, the community. Thus, promoting a law-enforcement cultural paradigm—modeled on the beat cop—could improve these strains. Moreover, emphasizing professional conduct as a critical criteria for both promotion and maintenance of status would likely provide added legitimacy to enforcement agencies in the eyes of the general public.

Capacity Improvement

Although large amounts of resources have been added to the border in the past decade, undertaking a border protection mission in a globalized economy is a massive undertaking. As such, the capacity of border officials to screen, scan, process, and otherwise maintain operational control at the border could be further improved. While some of the options below are being pursued by DHS agencies, they are currently being pursued incrementally.

- **Comprehensive Biometric Entry-Exit System:** Despite being mandated by law, DHS has yet to implement a fully operational biometric entry/exit capability. The exit component has been particularly problematic, although volumes at land POEs make the entry component problematic there as well. This capacity is essential for the domain awareness component of the border framework to function as intended. DHS does not currently have any publically announced plans for deploying the biometric exit capability, and relies on biographic data to match passenger records for air and sea travelers.
- **Improved Scanning Technology:** Current scanning technologies, while significantly improved over past technologies, are one of the most significant contributors to bottlenecks at POEs due to the processing time. Any improvements in scanning time can contribute significant savings to business and alleviate border pressures. However, recent efforts at such improvements have raised privacy concerns among critics (e.g., full-body image scans). Thus, future solutions will likely have to account for and address such concerns.
- **More Ports of Entry:** Adding additional ports of entry would help facilitate the crossing of legal traffic and possibly reduce the wait times and bottlenecks currently being created at some POEs.
- **Push Ports of Entry Out:** Placing POEs away from the border into the interior of a neighboring country would not only provide additional space to operate for currently land-locked POEs, but it would also physically remove any threat interaction at POEs away from U.S. soil. CBP has previously attempted to

negotiate such an agreement to conduct a pilot program, but negotiations stalled largely over the authorities CBP officers would be granted in Canada.⁹⁵

- **Improved POE Design:** Numerous POEs create bottlenecks by way of inefficient processes or through designs that were limited in their expansion capability. CBP has begun to address these bottlenecks at airports through the development of what it calls “model POEs,” where customs and immigration inspections are conducted by the same inspector and more space is allocated to arriving passengers. Reconceptualizing POEs for future generations of use by building in exit inspection capabilities, acquiring enough space for future expansion, and eliminating process inefficiencies through POE design are all elements of improved POE capacity.
- **Outbound Inspection:** In years past, border officials have had little interest in outbound inspections, since such activities placed people and goods under the jurisdiction of other countries. However, with the significant amount of violence occurring in Mexico in recent years, policymakers have been concerned about spillover violence. As such, the flows of money and guns that potentially fuel the violence in Mexico have been an area of interest. In addition to fulfilling the congressional requirements of outbound biometric inspections, having outbound inspections could potentially impede some of the flows of funds and weapons involved in violence.
- **Place Vehicular Ports of Entry Away from Urban Centers:** An ongoing problem for CBP is that many of their POEs have become landlocked due to urban growth around these crossings. In addition, the heavy vehicular traffic congests city streets due to the limited number of inspection lanes. A possible policy option is to place vehicular POEs outside urban centers. This approach would decongest vehicle traffic in urban areas and allow for the construction of more inspection lanes. Existing POEs could be converted to pedestrian and small vehicle-only crossings, thereby maintaining urban ties while encouraging the use of public transportation.

Reduce Foreign Supply of Potential Border Violators

Providing for effective border protection in the long term is not best done as a purely reactive process; it is best to also involve a proactive process to address the foreign supply of border incursions. For policymakers, such proactive measures would mean evaluating various options for engaging foreign partners in solutions abroad that would reduce security pressures on the United States border. For example, CBP has pursued such efforts by working out MOUs with sister agencies in foreign governments to provide for matching security standards. Other proactive options might include the following:

- **Increase Mexico’s Border Inspections/Enforcement:** Relative to the United States, Mexico has a relatively permissive policy toward border traversing. Combined with the lack of any land-based exit inspection from the United States, this policy makes the supply flow of illegal goods and money to Mexico relatively open. Moreover, Mexico does not have comparable levels of border enforcement resources to the United States. The United States has worked with

⁹⁵ The U.S.-Canada preclearance agreement would have included the implementation of two pilot sites: the Peace Bridge (Buffalo, NY-Fort Erie, ON) and the Thousand Islands Bridge (Alexandria Bay, NY- Landsdowne, ON). However, these negotiations were suspended on April 26, 2007.

Mexican officials through past efforts, such as the Merida Initiative, to improve border and law enforcement, but additional proactive measures of assistance and cooperation would likely improve border protection effectiveness for both countries. Over time, such efforts would allow for an expansion of cooperative border protection efforts, thereby increasing the security of both countries. Lessons learned from such efforts could also be applied in developing additional cooperative efforts with Canada.

- **Boost Foreign Economies and Demand for Labor:** One policy option that directly affects the push/pull factors that cause individuals to migrate is to boost foreign economies and labor markets. Such efforts could result in a reduced incentive to migrate to the United States. In terms of border protection, it might be beneficial for policymakers to target such efforts toward labor markets that tend to be the source of unauthorized populations in the United States. While trade theory suggests that some of these effects would occur through market-based engagement, policymakers may wish to consider economic assistance, outreach efforts to foreign governments, or other approaches to achieve more targeted aims.

Reduce Domestic Demand for Illegal Incursions

The flip side to proactive foreign border protection efforts is to engage in proactive domestic efforts to reduce demand for border incursions. For policymakers, finding policy changes that would effectively reduce such demand without depriving U.S. citizens of civil liberties or having unintended detrimental effects constitutes one of the more challenging aspects of such reform. As such, potential proactive domestic policy options might include the following:

- **Expansion of Attrition Policies:** With the use of voluntary electronic employment verification for new hires and biometric screening against databases of individuals booked in local detention facilities, the policy of attrition should theoretically reduce both the demand for and supply of unlawful incursions. If such policies prove effective, policymakers may wish to consider making such attrition policies mandatory for all employers and detention facilities. Such efforts, however, could result in opposition from certain immigration and privacy groups concerned about the impact of these policies on aliens and U.S. citizens alike.
- **Decriminalization of Drugs:** Some observers have drawn parallels between efforts to combat illegal drug smuggling and distribution with efforts to combat alcohol during prohibition. These critics of current policy contend that the decriminalization and regulation of many illegal drugs would eliminate a major revenue source for criminal enterprises, provide a new source of government revenue through taxation, and reduce budgetary pressures through lessened resource needs for both law enforcement personnel and detention space. Opponents to such an approach contend that the negative consequences of such a legalization would far outweigh these potential benefits, including resulting in higher drug addiction rates. In regards to border protection efforts, such a legislative shift by policymakers would allow border officials to focus their resources on other priorities.

Conclusion

The border protection framework goals of obtaining operational control of the borders, safeguarding lawful trade and travel, and identifying and disrupting transnational criminal organizations are necessarily vague, as the breadth of the threats and activities at the border are wide. But these goals are rooted in the notion that a strategy based on enforcement can ultimately prevent or deter most actions that are undesirable. This assumption has been the source of much debate and continues to be the source of skepticism in certain circles. As the empirical analysis above suggested, few conclusive claims about the effectiveness of the current border protection framework can be made.

Yet, even if enforcement-only measures do provide some level of deterrence and prevention against border violations, these efforts are both costly and do not necessarily address the underlying causes of such activities. Moreover, they can have unintended consequences; for example, introducing inefficiencies to market systems through enforcement efforts that in turn present profitable opportunities for criminal enterprises. Border protection is a system; but similar to a complex organism, it is one system that overlaps and interacts with other systems to generate the whole. And when threats to homeland security arise from any of these overlapping and interacting systems, the root causes of threats in those systems warrant attention aside from any enforcement-based border protection effort. Otherwise, the enforcement efforts could become similar to a dam without a spillway: some water is held back, but the rest continues to overflow.

For policymakers, the key issue in any border protection strategy is therefore how to address the underlying causes for some unlawful activities to release some of the pressures that are placed upon the border protection mechanism. Moreover, policymakers may wish to ask whether a unified view of tackling the different threats to homeland security is the appropriate avenue for achieving its desired effects. While some threats should perhaps only be pursued with enforcement measures (e.g., terrorism), other activities may benefit from a more multifaceted approach.

If such discussions about amending policies do occur, policymakers will be confronted with the fundamental question that precedes pursuit of any comprehensive border protection strategy: What level of risk is acceptable to live with? Thus far, the answer has largely been that virtually no risk is acceptable, despite the fact that Americans accept risks in all aspects of their lives on a daily basis. Yet, this answer entails costs to both businesses and communities. Simultaneously, less border protection could potentially produce negative consequences. As such, these fundamental questions are ones that policymakers face continuously as circumstances change and risks are recalibrated.

Appendix A. Strategic Plans of Key Border Protection Entities

Table A-1. Strategy Components of Key Border-Related Homeland Security Entities

Strategy Components	QHSR	DHS	CBP	Ports of Entry	Border Patrol
Goals	Effectively control the borders, Safeguarding lawful trade and travel, and Identifying and disrupting transnational criminal organizations	Effectively control U.S. air, land and sea borders Safeguard lawful trade and travel Disrupt and dismantle transnational criminal organizations	Prevent terrorists and terrorist weapons, including weapons of mass destruction and weapons of mass effect, from entering the United States at the ports of entry. Strengthen control of the borders between the ports of entry to prevent the illegal entry of terrorists, terrorist weapons, contraband and illegal aliens into the United States. Increase the security of the homeland by completing the merger and unification of all United States border agencies. Facilitate the more efficient movement of legitimate cargo and people. Contribute to a safer America by prohibiting the introduction of illicit contraband, such as illegal drugs, counterfeit goods and other harmful materials and organisms, into the United States. Build a strong, modern management infrastructure that assures the achievement of business results.	Advance Knowledge Effective Inspections Focused Security Secure Environment Successful Implementation	Establish and maintain operational control of the border of the United States

Strategic Objectives

Prevent illegal entry	Prevent illegal entry	Expand and enhance and improve use of information and intelligence	Increase scope and accuracy of information gathered on people, goods, and conveyances ahead of arrival at the border	Establish substantial probability of apprehending terrorists and their weapons as they attempt to enter illegally between the ports of entry;
Prevent illegal export and exit	Prevent illegal export and exit	Extend zone of security through partnerships and cooperate with other entities; Promote industry and foreign partnerships	Implement a highly effective risk management process by performing advance analysis on collected information to identify potential threats prior to their arrival and to enable screening prioritization	Deter illegal entries through improved enforcement;
Secure key nodes	Secure key nodes of transaction and exchange	Implement comprehensive border strategy; Develop smart border concept	Screen all people, goods, and conveyances crossing the border at the POE	Detect, apprehend, and deter smugglers of humans, drugs, and other contraband;
Secure conveyances	Secure conveyances in key global trading and transportation networks	Address training and infrastructure needs; Deliver high-quality, cost-effective, mission driven training; Recruit, hire and retain qualified workforce; Expand rapid-response capabilities; Maintain financial integrity and improve asset management	Maintain flexible, agile, and streamlined inspection processes	Leverage “Smart Border” technology to multiply the effect of enforcement personnel; and
Manage the risk posed by people and goods in transit	Manage risk posed by people and goods in transit	Create a shared culture within the agency; Resolve administrative issues; Promote and expand human capital; Realign air and marine operations and provide support; Ongoing assessment of management effectiveness	Improve recording and use of border crossing, inspection, and enforcement results	Reduce crime in border communities and consequently improve quality of life and economic vitality of targeted areas.
Identify, disrupt, and dismantle transnational criminal and terrorist organizations	Identify, disrupt and dismantle criminal and terrorist organizations	Establish unified primary inspections and establish antiterrorism secondary inspections; Ensure revenue protection/collection	Increase situational awareness to improve border security at the ports of entry	
Disrupt illicit pathways	Disrupt illicit pathways	Enforce laws and regulations, and reduce importation of prohibited/illegal items	Equip the ports with specialized enforcement capabilities to promote national resilience	
		Utilize information, science and technology; Modernize using state-of-the-art technology and processes; Deploy technologies as force multiplier, and deploy innovative and secure IT systems	Secure POE facilities enabling CBP to effectively perform its mission	
			Improve physical security controls at ports of entry	
			Expand and enhance information-sharing partnerships to improve intelligence development and field operations	
			Maintain a workforce highly effective at carrying out CBP’s POE border security mission and strategic goals	
			Capitalize on emerging technologies in order to plan and manage a cohesive technology portfolio that best supports analysis and decision-making by CBP personnel.	

Source: U.S. Department of Homeland Security, *Quadrennial Homeland Security Review Report: A Strategic Framework for a Secure Homeland*, Washington, DC, February 2010.; U.S. Customs and Border Protection, *Protecting America: 2005-2010 Strategic Plan*, May 2005; U.S. Customs and Border Protection, Office of Field Operations, *Securing America's Borders at Ports of Entry: Strategic Plan FY2007-2011*, September 2006; U.S. Border Patrol, *National Border Patrol Strategy*, August 2007.

Notes: The table only includes those strategy elements that pertain to border security. Thus, such factors as natural disaster preparedness are not included. Also, as the subject of this report pertains specifically to the movement of people, CBP's strategic plans on supply chain security, trade supply, and container initiatives are excluded.

Appendix B. Appropriations

Table B-1 includes appropriations information for agencies with border protection-related functions, including those agencies whose functions are most directly tied to this mission. These agencies include the Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), United States Coast Guard, Transportation and Security Administration, Drug Enforcement Administration (DEA), and the Executive Office for Immigration Review (EOIR). Despite these ties, of the agencies depicted in **Table B-1**, only CBP has an exclusive focus on border security. Moreover, all of the agencies have additional missions and foci outside of illegal immigration. Therefore, the funding figures that are presented should not be construed to depict funding for combating illegal immigration and providing border security. Rather, these figures should be understood as being the aggregate funding of agencies whose missions compel them to play a significant role in combating illegal immigration and/or providing border security.

Table B-1. Appropriations for Select Agencies with Border Security-Related Activities, FY2004-FY2010

Gross Totals in Millions of Dollars

Year	CBP	ICE (excluding FPS) ^a	U.S. Coast Guard	TSA	DEA	EOIR
2004	4,899	1,839	6,764	4,578	1,585	194
2005	5,333	2,281	7,568	5,401	1,639	204
2006	5,893	2,743	8,056	6,286	1,686	216
2007	8,186	3,694	8,447	6,707	1,737	228
2008	9,423	4,309	8,932	6,814	1,887 ^b	233
2009	9,821 ^c	4,989 ^d	9,713	7,978	1,939	268
2010	10,127	5,437	10,140	7,656	N/A	N/A

Source: CRS presentation of information contained in the enacted bills and House and Senate Reports for the DHS Appropriation Bills, Treasury Appropriations Bills, and the Justice Appropriation Bills for FY2004-FY2010.

Notes: FY2004 was the first budget year for CBP and ICE, despite the agencies having officially existed during FY2003.

- a. FPS is the Federal Protective Service. FPS has been funded by offsetting collections and in FY2010 it will be transferred out of ICE and into the National Protection and Programs Directorate (NPPD).
- b. As part of the Supplemental Appropriations Act, 2008 (P.L. 110-252), DEA received an additional \$30 million.
- c. This total does not include \$731 million in emergency appropriations for FY2009. For additional information, see CRS Report RL34482, *Homeland Security Department: FY2009 Appropriations*, coordinated by Jennifer E. Lake, *Homeland Security Department: FY2009 Appropriations*, coordinated by Jennifer E. Lake.
- d. This total does not include \$87 million in emergency appropriations for FY2009. For additional information, see CRS Report RL34482, *Homeland Security Department: FY2009 Appropriations*, coordinated by Jennifer E. Lake.

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